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BY
R. NARAYANASWAMI IYER, B.A., B.L.,



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1939 Mad. 443=(1939) 1
M L J 812
— 171=30 Bom L R 766,
Foll 41 Bom L R 825
— 227=I L R 3 Luck 314
(P C) Ref (1939) 2 M L
J 596
— 256=51 Mad. 349 Foll
I L R 1939 Bom 420, 43
CWN 374
— 360=52 Bom 597 (P C)
Foll. (1939) 1 M L J. 436.
- 56 IA. 21=52 Mad. 175 (P C)
Ref. (1939) 1 M L J. 499
— 93=33 CWN. 323 Ref
43 CWN 1173
— 119 Ref I L R 1939 Kar.
18
— 182=31 Bom L R. 816 Ref
41 Bom L R. 787.
— 186=8 Pat. 840 (P C)
Ref. (1939) 1 M L J. 245
— 372=4 Luck 483 Rel
I L R (1939) 1 Cal 63
- 57 IA. 86 Foll 14 Luck. 138.
— 100=I L R. 57 Cal 1148
(P C.) Foll (1939) 2 M L.
J 98; Ref 66 I A. 145=
I L R. 1939 All. 460.
— 110=34 CWN 342 Ref.
43 CWN 281 (P C);
(1939) 1 M L J 544; Rel
I L R. (1939) 1 Cal 283;
Rewined 18 Pat. 13.
— 117=57
I L R

- 57 IA 177=54 Bom 455=AIR
 1930 PC 163 (PC) Ref
 (1939) 2 MLJ 236
 —206=10 Pat 187 (PC)
 Foll (1939) 2 MLJ 614
 —313=35 CWN 89 Ref
 43 CWN 656=ILR
 (1939) 2 Cal 12 (PC)
 —325=11 Lah 657 Cons
 ILR (1939) 1 Cal 349
 —339=58 Cal 858 Ref
 (1939) 2 MLJ 722
- 58 IA 50=35 CWN 381 Ref
 43 CWN 250
 —68 Dist (1939) 2 MLJ
 522 Ref 661 A 184=ILR
 (1939) 2 Cal 243
 —115=9 Rang 170 Ref
 ILR 1939 Bom 1
 —220=53 All 300 Foll
 1939 ALJ 463, Ref ILR
 1939 All 680, 43 CWN
 N 814 (PC)
 —239=54 Mad 691 Ref
 ILR 1939 Mad 178 (PC)
 C=66 IA 23 Expl 41
 Bom LR 362
 —270=59 Cal 142 (PC)
 Ref (1939) 1 MLJ 575,
 Rel ILR (1939) 1 Cal
 63
 —402=55 Mad 1 (PC)
 Foll (1939) 1 MLJ 831,
 Ref ILR 1939 Mad 622
 —440=59 Cal 728 Foll
 ILR (1939) 2 Cal 236,
 330 Ref 43 CWN 469=
 ILR (1939) 1 Cal 222=
 (1939) 1 MLJ 1 (PC)=
 66 IA 1
- 59 IA 29=36 CWN 221 Foll
 43 CWN 432
 —130=11 Pat 272 (PC)
 Ref (1939) 2 MLJ 649
 —206=59 Cal 1343 Re
 viewed 18 Pat 13
 —236=7 Luck 257 (PC)
 Dist (1939) 2 MLJ 345
 —258=56 Bom 313 Dist
 ILR (1939) 1 Cal 257
 —259 Cons 43 CWN 445
 —283=60 Cal 1 Ref ILR
 1939 Bom 9 173
 —300=54 All 564 (PC)
 Ref (1939) 1 MLJ 751
 —331 Ref ILR 1939 Mad
 443=(1939) 1 MLJ 812,
 66 IA 131
 —376=36 CWN 1017 Dist
 18 Pat 459, Ref 43 CWN
 N 98
 —405=35 Bom LR 1 Dist
 41 Bom LR 473
- 60 IA 71=37 CWN 401 Dist
 43 CWN 602
 —76=11 Rang 58 (PC)
 Foll (1939) 2 MLJ 40
 —124=37 CWN 541 Ref
 43 CWN 102
 —146=12 Pat 318 (PC)
 Ref & Rel (1939) 1 MLJ
 J 451.
- 60 IA 167=56 Mad 405 Dist
 41 Bom LR 506, 18 Pat
 155 Ref & Expl (1939) 2
 MLJ 859
 —203=56 Mad 570 Foll
 (1939) 1 MLJ 209
 —242=12 Pat 642 Ref
 ILR 1939 Bom 512
 —278=56 Mad 657 at 668
 Ref (1939) 2 MLJ 296
 —362=12 Rang 105 Ref
 ILR 1939 Bom 1
- 61 IA 10=61 Cal 285 (PC)
 Rel (1939) 1 MLJ 371
 —41 Foll 43 CWN 927
 (PC)
 —62 Ref 1939 Rang LR
 508, Foll 1939 Rang LR
 587
 —163 Foll 14 Luck 138
 —171=38 CWN 517 Ref
 43 CWN 1173
 —200=57 Mad 749=67
 MLJ 20 Appl (1939) 1
 MLJ 245=43 CWN
 337 (PC)
 —209 Foll 41 Bom LR 232
 —286=56 All 468 (PC)
 Appl (1939) 1 MLJ
 831, Cons 43 CWN 365,
 Ref 43 CWN 594 (PC),
 ILR 1939 Mad 443 622,
 66 IA 134
 —350=56 All 548 Ref ILR
 R 1939 Bom 533
- 62 IA 36 Ref 18 Pat 544
 —115=57 All 314 Ref
 (1939) 1 MLJ 582
 —215 Dist 66 IA 23
 Ref ILR 1939 Mad 178
 (PC)
 —265=63 Cal 1 Rel ILR
 R (1939) 1 Cal 477
- 63 IA 155 Dist (1939) 1 MLJ
 170
 —169 Cons 43 CWN 365
 —372 Foll 1939 Rang LR
 97
 —397 Foll 41 Bom LR 561
 64 IA 55 (PC) Rel ILR
 (1939) 1 Cal 46
 —215 Foll 41 Bom LR 362
 —302 at 308 Ref 66 IA
 84=14 Luck 192 (PC),
 43 CWN 501, (1939) 1
 MLJ 352
- 65 IA 32=ILR 1938 Bom 249
 Dist ILR (1939) 1 Cal
 257
 —66 Ref ILR 1939 Lah
 56=66 IA 12
 —106 Foll (1939) 2 MLJ
 624
 —252=42 CWN 1013 Ref
 43 CWN 1037 (PC)
 —354=42 CWN 1098 Ref
 43 CWN 874
- 66 IA 66=18 Pat 234 (PC)
 Cons (1939) 2 MLJ 635
- I L R ALLAHABAD SERIES
 1 All 453 Ref ILR 1939 Nag
 515
 2 All 352 Rel ILR 1939 Kar
 417
 —573 Ref 1939 Rang LR
 383
 3 All 168 Ref ILR 1939 Lah
 100
 4 All 198 Ref 1939 ALJ 732
 —219 Dist 41 Bom LR 473
 —381 Disappr ILR 1939
 All 607=1939 ALJ 308
 5 All 42 Ref ILR 1939 Nag
 357
 6 All 231 Ref ILR 1939 Mad
 367
 —269 (PC) Ref ILR, 1939
 Nag 104
 —313 Rel ILR 1939 All
 298=1939 ALJ 77
 —322 (PC) Rel ILR 1939
 Kar 422
 —351 Foll ILR 1939 All
 261
 —417 Foll ILR 1939 Nag
 592
 —509 (FB) Foll 1939 AL
 J 732
- 7 All 523 Ref 14 Luck 65
 —641 Diss ILR 1939 Lah
 103
 —676 Expl ILR (1939)
 1 Cal 530=43 CWN
 531
- 9 All 52 Ref ILR 1939 Kar
 370
 —59 Dist ILR 1939 All
 424=1939 ALJ 367
 —484 Foll 18 Pat 366
 —591 Ref 14 Luck 467
- 10 All 47 Dist ILR 1939 All
 319
 —166 (PC) Ref ILR 1939
 Nag 104
 —425 Rel ILR (1939) 1
 Cal 574, Ref 1939 AIJ
 394
- 11 All 194 Ref ILR 1939
 Mad 242
 —375 Ref ILR 1939 All
 19
- 12 All 64 Ref ILR 1939 All
 97
 —96 Expl ILR (1939) 1
 Cal 530=43 CWN 539
 —313 Foll ILR 1939 All
 385=1939 ALJ 211, Rel
 ILR 1939 Nag 548
 —387 (PC) Foll 1939 AL
 J 377
 —461 Foll 1939 Rang LR
 686
- 13 All 76 Ref ILR 1939 Bom
 173
 —126 Ref 14 Luck 366
- 14 All 185 Ref ILR 1939 All
 67
 —226 Ref 1939 FCR 159,
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- 15 All 84 Dist 1939 FCR 13
— 192 Ref 1939 Rang LR 251.
- 16 All 181 Appr I LR 1939 All 67
— 221 Reviewed 18 Pat 500.
— 286 Appr I LR 1939 All
— 354=1939 A L J 221
— 308 (F B) Dist I LR.
— 1939 Nag 422
— 369 Ref 41 Bom LR 561
- 17 All 39 Dist 18 Pat 305
— 87 Rel 1939 A L J 821
— 112 Ref 1939 FCR 159
— 198 (P C) Ref I LR 1939
— Bom 173, I LR 1939 All
— 103
— 222 Ref I LR 1939 All
— 354; Rel I LR 1939 Lah
— 295
- 18 All 329 Rel 1939 A L J 913
- 19 All 50 Ref I LR 1939 Kar
— 659
— 127 Ref 1939 Rang LR
— 275
— 332 Dist & Disappr I L
— R. 1939 All 354=1939 A
— L J 221
- 20 All 171 (P C) Rel I LR
— 1939 Nag 607
— 248 Foll & Expl I LR
— 1939 All 265=1939 A L J
— 104; Ref 14 Luck 459
— 501 Cons 18 Pat 76
- 21 All 20 Disappr I LR 1939
— All 354=1939 A L J 221.
— 127 Ref 14 Luck 351.
— 323 Rel I LR. 1939 Nag
— 548
— 348 Dist. I LR 1939 All.
— 337=1939 A L J 178
— 354 Ref I LR 1939 All.
— 142
— 412 Ref I LR 1939 All
— 406.
— 450 Ref I LR 1939 Nag
— 601
- 22 All 149 (P C) Foll 1939 A L
— J 377, Rel I LR. 1939
— Kar 530
— 168 Not Appl I LR 1939
— All. 607
— 270 Ref 14 Luck 78
- 23 All 130 Rel I LR 1939 Bom.
— 66
— 263 Ref I LR 1939 Bom.
— 232=41 Bom LR. 249
— 277 Appr. I LR 1939 All.
— 647.
— 364 Ref 14 Luck. 116
— 467 Dist. 18 Pat 155
- 24 All 164 Rel. (1939) 2 M L J.
— 460
— 172 Rel I LR (1939) 1
— Cal. 81.
— 190 Dist I LR 1939 All.
— 322=1939 A L J 138
— 218 Ref I LR 1939 All.
— 607.
— 381 Foll I LR. 1939 Nag.
— 300
- 24 All 504 Overr 43 C W N 641
— =41 Bom LR 742=1939
— A L J 697 (P C)
- 25 All 133 Rel I LR 1939 Kar.
— 152
— 209 Dist I LR 1939 Kar
— 12
- 26 All 202 Rel I LR 1939 Lah.
— 283
— 447 Ref I LR 1939 All.
— 354
- 27 All 266 Foll I LR 1939 Nag
— 1
— 325 (P C) Foll 18 Pat
— 342
— 334 (P C) Dist 18 Pat
— 378
— 447 Ref 1939 Rang LR
— 474
— 485 Rel I LR 1939 Nag.
— 492
— 544 Dist I LR 1939 All.
— 286
— 575 Foll I LR 1939 All.
— 258=1939 A L J 66
— 619 Ref I LR 1939 All.
— 97
— 622 Foll. I LR 1939 Mad.
— 78
— 634 (P C) Foll 18 Pat.
— 370
— 702 Ref 14 Luck 213
- 28 All 48 Appr I LR. 1939 All.
— 647
— 51 Rel I LR 1939 Nag.
— 548
— 247 Ref I LR 1939 All.
— 680
— 277 Dist. I LR 1939 Nag.
— 81.
— 400 Ref 14 Luck 459
— 439 (P C) Rel I LR 1939
— Kar 348
— 727 (P C) Ref I LR 1939
— Nag 624
- 29 All 301 Rel I LR 1939 Nag.
— 367.
— 434 Reviewed 18 Pat. 82
— 563 Ref I LR 1939 All.
— 178
— 612 Diss. I LR 1939 Lah.
— 103
— 667 Foll I LR 1939 Nag.
— 465
- 30 All. 117 Diss I LR 1939 Lah.
— 433
— 125 Rel. I LR 1939 Nag.
— 636
— 324 = 5 A L J. 352 (F B)
— Rel 1939 A L J 629
— 334 (F B) Ref I LR. 1939
— Bom 160=41 Bom L.R.
— 277
— 422 Dist. I LR (1939) 2
— Cal. 33=43 C W N 604.
— 510=5 A L J. 701 Foll.
— 1939 A L J 128.
- 31 All. 56 Not Foll I LR. 1939
— Lah. 424
- 31 All 82 Ref I LR 1939 All.
— 354, Rel I LR 1939 Lah.
— 295.
— 156 Foll. (1939) 2 M L J.
— 619
— 176 Ref I LR 1939 Mad.
— 7 (F B), I LR 1939 Mad
— 422
— 304 Ref I LR (1939) 1
— Cal 523=43 C W N 512
— 457=13 C W N 1073 (P.
— G) Ref 43 C W N 585;
— 41 Bom LR 700
- 32 All 57 Rel I LR. 1939 Kar.
— 662
— 222 Dist I LR 1939 All
— 167
— 246 Ref I LR 1939 All
— 406
— 284=7 A L J 233 Ref.
— 1939 A L J 821
— 325 (F B) Rel I LR. 1939
— Nag 592
— 363 Ref 14 Luck 515.
— 415 (P C) Ref I LR 1939
— Mad 853
— 491 Dist I LR 1939 Nag.
— 216
— 525 Dist. I LR (1939) 1
— Cal 152
— 551 Ref I LR 1939 All.
— 322=1939 A L J 138
— 623 Disc 14 Luck 116
- 33 All 90 Foll I LR. 1939 All.
— 296=1939 A L J. 65
— 136 Rel 1939 A L J 209
— 356 Ref 14 Luck 9
— 654 Dist 41 Bom L.R.
— 268
— 695 Foll I LR 1939 Nag
— 1.
- 34 All 143 Rel. I LR 1939 Lah.
— 433
— 296 Appl. I LR 1939 All.
— 241 Ref 41 Bom LR 867
— 345 Cons. 18 Pat 76
— 375 Ref I LR 1939 All
— 647.
— 468 Rel I LR 1939 Kar.
— 325
— 482 Ref. 1939 Rang L.R.
— 108.
— 496 Appr I LR 1939 All
— 647=1939 A L J 522
— 596 Foll. I LR 1939 All.
— 261.
— 628 Appl (1939) 1 M L J.
— 705.
- 35 All 227 (P C) Dist. I LR.
— 1939 Nag 312; Ref I LR.
— 1939 Bom 173; Rel
— 18 Pat 1.
— 389 Ref. I LR 1939 All.
— 97.
- 36 All 81 (P C)=25 A L J. 115
— Rel 1939 A L J 642
— 195 (P C) Foll I LR.
— 1939 Kar. 632; Ref I LR.
— 1939 Nag 515
— 284=27 A L J 1 1 P
— Appl (1939) 2 M L *

- 36 All. 336 (P C) Ref I L R 1939 Nag 607
 — 350=27 M L J 17 (P C)
 — Appl (1939) 2 M L J 671
 — 383 Ref 14 Luck 548
- 37 All 26 Rel I L R 1939 Lah 381
 — 45 Foll I L R 1939 Nag 383
 — 129 (P C) Foll I L R 1939 Lah 266
 — 557=13 A L J 991 Ref 1939 A L J 913
- 38 All 59 Ref I L R 1939 All 607
 — 126 Dist 41 Bom L R 268
 — 226=14 A L J 263 Rel 1939 A L J 913
 — 240 Ref I L R 1939 Nag 104
 — 292 Ref I L R 1939 Mad 367
 — 590 Ref I L R 1939 Mad 622
- 39 All 47 Rel I L R 1939 Nag 548
 — 174 (P C) Rel I L R 1939 Nag 1
 — 415 Ref 1939 F C R 193
 — 437 Ref I L R 1939 Mad 422, I L R 1939 Mad 7 (F B)
 — 536 Diss 18 Pat 155
 — 641 Dist I L R (1939) 1 Cal 477=43 C W N 401, I L R 1939 Mad 828= (1939) 2 M L J 86
- 40 All 84 Ref 41 Bom L R 977
 — 86 Expl (1939) 2 M L J 786
 — 147 Ref I L R 1939 Nag 515
 — 197 Expl (1939) 2 M L J 786
 — 198 Disappr I L R 1939 All 647, Ref I L R 1939 Mad 611
 — 256 Appr I L R 1939 All 366
 — 341 Rel I L R (1939) 1 Cal 574
 — 449 Foll I L R 1939 Nag 1
 — 680 Rel I L R 1939 Lah 103
- 41 All 37 Ref I L R 1939 All 282
 — 259 Ref 14 Luck 467
 — 473 Foll I L R 1939 Nag 261
 — 503=17 A L J 776 Ref I L R 1939 All 424= 1939 A L J 367
 — 526 Not Foll (1939) 1 M L J 466
 — 611=17 A L J 822 Rel 1939 A L J 824
 — 643 Ref I L R 1939 Nag. 498
- 42 All 118=17 A L J 1140 Not Appr I L R 1939 All 647
- 1939 A L J 522, Ref I L R 1939 Mad 611
- 42 All. 158 (P C) Expl & Dist I L R 1939 Mad 290, Foll 1939 A L J 415
 — 181 Foll I L R 1939 A 261
 — 336 Ref I L R 1939 Kar 597
 — 412 Ref I L R 1939 All 282
 — 449 Ref I L R 1939 Nag 1
 — 461 Dist I L R 1939 Bom 256=41 Bom L R 195
 — 549 Foll 41 Bom L R 249
- 43 All 60 Foll I L R (1939) 1 Cal 452=43 C W N 383
 — 152=18 A L J 988 Foll I L R 1939 All 538= 1939 A L J 415
 — 228 Ref I L R 1939 Nag 88
 — 325 Ref I L R 1939 All 282
 — 331 Ref I L R 1939 Kar 417
 — 402=19 A L J 191 Ref I L R 1939 All 424= 1939 A L J 367
 — 555 Ref I L R 1939 Nag 540
 — 606=19 A L J 616 Dist 1939 A L J 200
 — 650 Ref 43 C W N 1059
- 44 All 67 Dist I L R 1939 All 185
 — 200=40 A L J 9 Rel I L R 1939 All 443 1939 A L J 62, 1939 A L J 736
 — 332 Ref 18 Pat 544
 — 360 Ref 41 Bom L R 391, 14 Luck 351
 — 503 (P C) Ref I L R 1939 Mad 226
 — 523 Dist I L R 1939 Lah 23
 — 659=20 A L J 596 Rel 1939 A L J 559
- 45 All 66 No longer good law I L R 1939 All 19
 — 179 (P C) Ref I L R 1939 Nag 1
 — 413 (P C) Foll I L R 1939 Lah 266
 — 443=21 A L J 338 Ref 1939 A L J 757
 — 497 Appl I L R 1939 All 24, Ref 41 Bom L R 867
 — 549 Rel I L R 1939 Bom 232
 — 644 Ref 1939 Rang L R 543
- 46 All 95 (P C) Expl I L R 1939 Nag 536, Ref I L R 1939 Mad 7 (F B), I L R 1939 Mad 422, Rel 1939 A L J 604
 — 210 Ref 14 Luck 366
 — 254 Ref 1939 Rang L R 479
- 46 All 465 Dist I L R 1939 Nag 648
 — 858 Dist I L R (1939) 1 Cal 152
- 47 All 151=23 A L J 179 Foll I L R 1939 All 237= 1939 A L J 19, I L R 1939 Mad 870
 — 158 (P C) Rel I L R 1939 Nag 544
 — 284 Dist 1939 Rang L R 570
 — 291 Dist I L R 1939 Nag 200
 — 304 Rel I L R 1939 Nag 104
 — 365 Rel I L R 1939 Kar 509
 — 374 Ref 1939 Rang L R 50
 — 479 Diss I L R (1939) 1 Cal 273, Foll I L R 1939 Nag 357, Ref I L R 1939 Kar 417
 — 534 Rel I L R 1939 All 167=1939 A L J 133
 — 552 Foll 18 Pat 459
 — 637 (F B) Diss I L R 1939 Nag 250, Ref 1939 Rang L R 280
 — 703 (P C) Rel 1939 A L J 642
 — 878 Ref I L R 1939 All 15
 — 883 Foll I L R 1939 Nag 88
- 48 All 4 Foll 18 Pat 499
 — 221 Dist I L R 1939 All 286
 — 343 Ref I L R 1939 Mad 853
 — 362 Dist 18 Pat 539
 — 422 Diss I L R 1939 Nag 165
 — 493 Disc 14 Luck 116
 — 616 Dist I L R 1939 All 286
 — 682 Foll I L R 1939 Nag 261
 — 684 Ref 1939 F C R 159
 — 711 Ref 14 Luck 492
 — 821 Rel I L R 1939 Nag 200
- 49 All 67 Appr I L R 1939 All 647
 — 92 Dist I L R 1939 Nag 569, Ref 41 Bom L R 182
 — 149=29 Bom L R 825 (P C) Ref I L R 1939 Bom 413=41 Bom L R 441
 — 240 Not Foll I L R 1939 Nag 405
 — 270 Ref 41 Bom L R 84
 — 312 Rel I L R 1939 Kar 64
 — 479 Rel I L R 1939 Kar 196
 — 565 Ref I L R 1939 Bom 173
 — 696 Dist I L R 1939 All 305=1939 A L J 344

- 49 All 701 Ref 1939 Rang L.R.
275
726 Appr I L R 1939 All.
647
848 Dist I L R 1939 All
406, Ref I L R 1939 All
122
903 Appr I L R 1939
2 Cal 291=43 C W N
999.
- 50 All 35 Dist 18 Pat 133
276 Ref 41 Bom L R 818
414 Ref 1939 Rang L R
294
510 Foll I L R 1939 Nag
1, Rel 1939 A L J 379
635 Not Appr I L R 1939
All 385
722 (P.C.) Foll I L R
1939 Kar 75, Ref 18 Pat
544
371 Cons 18 Pat 76
909 (F.B.) Foll I L R
1939 Nag 105
969 Foll 18 Pat 306, Ref
I L R 1939 All 305=
1939 A L J 344
956 Dist 1939 Rang L R
39, Rel I L R 1939 Bom.
71
- 51 All 79 Rel I L R 14 Luck 9
164=26 A L J 1024 Ref
1939 A L J 935.
182=30 Bom L R 285 (P.
C.) Ref 41 Bom L R 182.
285 Appl I L R 1939 All.
89
346 Rel I L R. 1939 Lah
470
411 Disc. I L R 1939 All.
286
439 Foll I L R 1939 Nag.
624
634 Rel 14 Luck 435.
878 Ref I L R 1939 All.
385
990 Dist I L R 1939 All.
305
- 52 All 74 Ref 41 Bom L.R. 757.
139 Ref 14 Luck 71
167 Ref I L R. 1939 Kar
82; I L R 1939 Nag 564
235 Foll. I L R 1939 All.
50
338 Foll. I L R. 1939 Nag
1
381 Ref (1939) 2 M L J
463
459 Ref I L R 1939 Nag
235
592 Foll I L R 1939 Nag
600
619 Ref 14 Luck. 492
1027 Appr I L R. 1939
All 602
- 53 All 21 Ref 43 C W N. 1093
(P.C.).
39 Ref I L R. 1939 All
50
54 Dist. (1939) 1 M L J
905
- 53 All 125 Dist I L R. 1939 All
162
313 Rel I L R 1939 Lah
275
344 (F.B.) Ref (1939) 1
M L J 692
374 Rel I L R (1939) 1
Cal 379=49 C W N 347
391 Ref I L R 1939 All
150 1939 A L J 53
484 Foll I L R 1939 All
277
510 Ref 18 Pat 670
673 Foll I L R 1939 All
50
600 Ref I L R 1939 Kar
98
706 Cons 18 Pat 76; Ref
41 Bom L R 81
- 54 All 6 Rel I L R 1939 Nag
510
72 Ref 14 Luck 164
151 (F.B.) Ref 1939 Rang
L R 606
189 (P.C.) Ref I L R 1939
Lah 164
263 (F.B.) Rel I L R 1939
Lah. 470
282 Ref. & Disc 1939 A L
J 85
293 Rel I L R. 1939 Lah
424
375 Ref 1939 Rang L R.
397.
379 Appr I L R 1939 All
67.
428 Appr I L R. 1939 All
492.
448 Foll I L R. 1939 Mad.
73
499 Ref I L R 1939 All
322=1939 A L J 138
516 Foll 18 Pat 404
534 Ref (1939) 1 M L J
337.
548 Rel I L R. 1939 Kar
196.
564 (P.C.) Ref 18 Pat. 306.
573 Overt. 66 I A 84=
43 C W N 501=14 Luck
192=1939 A L J 481=41
Bom L R 708=(1939) 1
M L J 652
622 Foll. 18 Pat. 395
646 (F.B.) Diss I L R
1939 Bom 340=41 Bom
L R 59.
738 Dist I L R 1939 All
89
800 Dist I L R 1939 All
399
807 Ref I L R. 1939 All
185; I L R. 1939 Bom 71
1051=1932 A L J 653,
Quære if rightly decided
43 C W N 669 (P.C.);
Foll 1939 Rang L R 388
- 55 All 1 (F.B.) Foll 18 Pat 306
83 Appl I L R 1939 All.
24.
196=1933 A L J 75 Rel
1939 A L J 555
- 55 All 241 Foll I L R 1939 Nag.
478
326 Ref 1939 I C R 159.
316 Dist I L R 1939 All
538
432 (F.B.) Diss I L R
1939 Bom 556=41 Bom
L R 947, 1939 Rang L R
668 (F.B.), Overt I L R.
1939 All 549=1939 A L J
278
509 Foll I L R 1939 Nag
119; Rel I L R 1939 Kar
156
519 Dist I L R 1939 Mad
216=(1939) 1 M L J 38
622 Appr I L R 1939 All
162=1939 A L J 4
632 Ref I L R 1939 All
200
648 Diss I L R 1939 Kar
160
725 (F.B.) Not Foll I L R
1939 Nag 383
775 Dist. I L R 1939 All
435
874 (F.B.) Appr. I L R.
1939 Mad 384; Rel I L
R 1939 Lah 201
985 Dist. I L R 1939 Nag
139
1008 Comm. I L R. (1939)
2 Cal 93=43 C W N 613
- 56 All 123 (P.C.) Rel I L R.
1939 Nag 1.
263 Ref I L R 1939 All
329
409 Ref I L R 1939 All
178
468 (P.C.) Appl I L R.
1939 Nag 64
548 (P.C.) Ref I L R 1939
Mad 70
634=1934 A L J 918 Ref
1939 A L J 555.
743 Dist I L R 1939 All
477
- 57 All. 26 Ref I L R 1939 All
103
108 (F. B.) Foll 18 Pat
459
166 Ref I L R. 1939 All
67
176 (F.B.) Foll (1939) 1
M L J. 114
267 Not Foll I L R. 1939
Nag 109
278 Dist I L R 1939 All.
All 454
455 Rel I L R. 1939 Lah
156
510 Ref I L R 1939 Nag.
569; 1939 Rang L R. 488.
561 Foll 18 Pat 459
605 (F.B.) Foll 18 Pat 306;
Ref I L R 1939 All 305
754 Ref I L R 1939 Nag
564.
838 Dist 1939 Rang
180
922 Appr I L R.
518

- 57 All 983 Ref I L R 1939 All
19 1939 F C R 159
- 58 All 40 Foll I L R 1939 All
231
63 Dist I L R 1939 All
286
139 Dist I L R 1939 Nag
383
191 Dist I L R (1939) 1
Cal 112
261 (F B) Diss 18 Pat 253
Ref 41 Bom L R 455 I L
R 1939 All 200 I L R
1939 Nag 235
313 Foll 1939 Rang L R
152
364 Appr (1939) 2 M L J
634
376 Appr I L R 1939 All
607
495 Foll I L R 1939 Bom
104, Ref I L R 1939 All
563
594 Ref I L R 1939 Bom
232-41 Bom L R 249
602 (F B) Foll 18 Pat
342 Ref I L R 1939 All
185
734 Foll I L R 1939 Nag
105
804 Foll I L R 1939 All
451
949 Doubted 1939 Rang
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Bom 82
- I L R 1937 All 108 Dist 1939
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113 Foll 18 Pat 181
317 (F B) Foll 18 Pat
271
434 Ref I L R 1939 All
231
757 Ref 14 Luck 218
817 (F B)-1937 A L J
627 Rel 1939 A L J 433
825 Ref I L R 1939 All
680-1939 A L J 463
880 (F B) Foll 18 Pat
342, Ref (1939) 2 M L J
533
921 (F B) Foll I L R
1939 Lah 116, I L R 1939
Lah 295
- I L R 1938 All 11 Rel I L R
(1939) 1 Cal 112
19 Ref & Expl I L R
1939 All 431
58 Ref I L R 1939 Mad
422
246 Dist 14 Luck 130
252 Dist I L R 1939 All
231
481 Appr I L R 1939 Mad
384
538 Appr I L R 1939 All
67
650 Dist I L R 1939 All
131
781 Ref I L R 1939 All
131
- I L R 1938 All 861 Ref I L R
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I L R 1939 All 103 Disappr I L
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286 Foll I L R 1939 All
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9 A L J 12 Not Appr I L R 1939
All 403=1939 A L J 97
211 Ref I L R 1939 All
220
- 11 A L J 445 Appr I L R 1939
All 67
481 Appr I L R 1939 All
419
12 A L J 963 Ref I L R 1939
All 67
13 A L J 553 Appr I L R 1939
All 366=1939 A L J 142
817 Ref 1939 A L J 128
833 Rel 1939 A L J 209
14 A L J 85 Rel 1939 A L J 433
123 (P C) Rel 1939 A L
J 842
16 A L J 121 Rel 1939 A L J 142
265 (P C) Foll 1939 A L
J 824
307 Ref 14 Luck 65
17 A L J 536 Rel 1939 A L J
1001
787 Appr I L R 1939 All
647
976 Ref I L R 1939 All
337 1939 A L J 178
1117 Rel 1939 A L J 260
1147 Rel 1939 A L J 957
18 A L J 1069 Rel 1939 A L J
1001
19 A I J 771 Foll I L R 1939
All 103
905 Ref 1939 A L J 746
20 A L J 151=66 I C 203 Ref
I L R 1939 Mad 600=
(1939) 2 M L J 72
21 A L J 201 Foll 1939 A L J
40
718 (P C) Foll 1939 A L
J 824
22 A L J 591 Ref I L R 1939
All 167
897 Rel 1939 A L J 582
23 A L J 151 Rel 1939 A L J
394
291 Foll 1939 A L J 174
24 A L J 773 Dist 1939 A L J
253
998 Ref 1939 A L J 941
26 A L J 681 Rel 1939 A L J 13
716 Dist 1939 A L J 211
- 26 A L J 1174 Rel 1939 A L J
1001
1378 Ref I L R 1939 All
305=1939 A L J 344
1929 A L J 155 Foll 1939 A L J
350
290 (F B) Ref & Dist
1939 A L J 253
303 Rel 1939 A L J 364
537 Dist I L R 1939 All
286=1939 A L J 253
588 Disappr I L R 1939
All 366=1939 A L J 142
1111 Dist 1939 A L J 344
1151 Appr I L R 1939
All 607
1186 Ref & Disc 1939
A L J 85
1270 Dist I L R 1939 All
305=1939 A L J 344
1930 A L J 216 Ref I L R 1939
All 178
482 Dist 1939 A L J 917
868 Rel 1939 A L J 249
1211 Ref I L R 1939 All
24
1244 Overr I I R 1939
All 602=1939 A L J 450
1249 Appr I L R 1939
All 518
1599 Rel 1939 A L J 450
1931 A L J 54 Ref I L R 1939
All 305=1939 A L J 344
166 Rel 14 Luck 213
177 Rel I L R 1939 Kar
241
225 Ref I L R 1939 All
594
354 Ref 1939 A L J 19
622 Ref I L R 1939 All
15
649 Ref I L R 1939 All
67
895 Ref I L R 1939 All
150
909 Ref 1939 A L J 642
968 Ref 1939 A L J 736
1932 A L J 129 Ref 1939 A L J
830
339 Rel (1939) 1 M L J
649
365 Ref 1939 A L J 1051
784 Ref 1939 A L J 193
1933 A L J 142 Dist 1939 A L J
415
521 Rel 1939 A L J 890
728 (F B) Dist 1939 A L
J 260
733 Ref I L R 1939 All
296
774 Ref I L R 1939 All
406
1127 Foll 1939 A L J 1
1934 A L J 170 Rel 1939 A L J
40
219 Rel 1939 A L J 919
244 Ref 1939 A L J 339
556 Dist 1939 A L J 895
569 Appl I L R 1939 All
594=1939 A L J 428

1934 A.L.J. 662 Expl. I.L.R. 1939
 All 67
 — 295 Ref I.L.R. 1939 All
 305
 — 312 (P.C.) Ref 1939 A.L.
 J 662
 — 561 (F.B.) Ref 1939 A.L.J.
 557
 1935 A.L.J. 23 Appr. I.L.R. 1939
 All 200
 — 74 Dist I.L.R. 1939 All
 354
 — 173 Ref I.L.R. 1939 Lah.
 206
 — 235 Foll. 1939 A.L.J. 708
 — 505 Dist 1939 A.L.J. 209
 — 573 Foll. 1939 A.L.J. 350
 — 547 Ref 1939 A.L.J. 847
 — 934 Foll. 1939 A.L.J. 100
 — 668 Ref I.L.R. 1939 All
 19
 — 973 (P.C. Rel. 1939 A.L.J.
 337
 — 1029 Ref 14 Luck 456
 — 1118 Dist 14 Luck 247;
 Rel. 1939 A.L.J. 308
 — 1179 Foll. 1939 Rang L.R.
 152
 — 1243 Ref I.L.R. 1939 All
 563
 — 1289 Appr. I.L.R. 1939 All
 518
 1936 A.L.J. 3 Dist 1939 A.L.J.
 1060
 — 33 Disappr. I.L.R. 1939
 All 345=1939 A.L.J. 183;
 Dist I.L.R. 1939 All
 505
 — 236 (F.B.) Rel. 1939 A.L.J.
 294
 — 281 Ref I.L.R. 1939 All
 185
 — 454 Appr. I.L.R. 1939 All
 419=1939 A.L.J. 206
 — 480 (P.C.) Ref 1939 A.L.J.
 115
 — 651 Dist 1939 A.L.J. 115
 — 879 Ref 1939 A.L.J. 897
 — 902 Ref 1939 A.L.J. 371
 — 1274 Dist 1939 A.L.J. 371
 — 1381 Ref I.L.R. 1939 All
 19
 1937 A.L.J. 125 Appr. I.L.R.
 1939 All 557
 — 153 Ref 1939 A.L.J. 9
 — 178 Rel. 14 Luck 112.
 — 278 Ref I.L.R. 1939 All
 97
 — 370 Foll. 14 Luck 13
 — 528 Ref I.L.R. 1939 All
 424=1939 A.L.J. 367
 — 684 Foll. 1939 A.L.J. 356
 — 766 Appr. I.L.R. 1939 All
 418=1939 A.L.J. 160
 — 778 Affirmed 1939 A.L.J.
 174.
 — 825 Not Appr. I.L.R. 1939
 All 563
 — 867 Ref 14 Luck 475
 — 882 Foll. 14 Luck 49
 — 945 Ref 14 Luck 130
 — 970 Ref 1939 A.L.J. 233.
 Y.D. 1939—b

1937 A.L.J. 1101 Ref 1939 A.L.
 J 447, Rel. 1939 A.L.J. 60
 — 1114 Reversed 1939 A.L.J.
 48
 — 1207 Ref 14 Luck 475
 — 1235 Rel. 14 Luck 218
 1938 A.L.J. 3 Overr. 1939 A.L.J.
 409
 — 4 Rel. 1939 A.L.J. 1053
 — 351 Ref 1939 A.L.J. 9
 — 481 Dist 1939 A.L.J. 13
 — 578 Ref 14 Luck 176
 — 585 Ref 1939 A.L.J. 199
 — 628 Foll. 1939 A.L.J. 156
 — 604 Foll. 1939 A.L.J. 156
 — 813 Ref 1939 A.L.J. 919
 — 854 (F.B.) Ref I.L.R.
 1939 All 399=1939 A.L.J.
 193
 — 872 Dist 1939 A.L.J. 13
 — 1013 Rel. (1939) 1 M.L.J.
 649
 — 1078 Not Appr. I.L.R.
 1939 All 554=1939 A.L.
 J 293
 — 1180 Dist 1939 A.L.J. 29
 — 1243 Ref 1939 A.L.J. 391
 1939 A.L.J. 62 Rel. 1939 A.L.J.
 736
 — 118 Rel. 1939 A.L.J. 447
 — 405 Dist 1939 A.L.J. 964
 — 481 Ref 1939 A.L.J. 1051
 — 1082 Ref I.L.R. 1939 All
 15

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2 A.W.N. 73 Foll. 1939 A.L.J. 174
 2 A.W.N. 244 Foll. 18 Pat. 323
 4 A.W.N. 78 Foll. 1939 A.L.J.
 174
 1887 A.W.N. 302 Rel. 1939 A.L.J.
 460
 1902 A.W.N. 34 Appr. I.L.R.
 1939 All 647.

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1935 A.W.R. 1116 Appr. 1939
 A.L.J. 171
 1936 A.W.R. 107 Dist 1939 A.L.
 J 168
 — 1098 Disappr. I.L.R. 1939
 All 518

BOMBAY HIGH COURT REPORTS

1 B.H.C.R. 220 Dist 41 Bom L.R.
 959
 4 B.H.C.R. (A.C.J.) 135 Ref I.L.
 R. (1939) 1 Cal 592=43
 C.W.N. 745
 5 B.H.C.R. App A Expl. I.L.R.
 1939 Mad 843=(1939) 1
 M.L.J. 784
 10 B.H.C.R. 241 Affirmed 41 Bom
 L.R. 760

I.L.R. BOMBAY SERIES

1 Bom 164 Ref 14 Luck. 366

1 Bom 523 Rel. I.L.R. 1939
 Nag 281
 — 610 Dist I.L.R. 1939 Bom.
 42
 2 Bom 494 Ref 1939 Rang L.R.
 170
 4 Bom 37 (F.B.) Ref I.L.R. 1939
 Mad 622
 — 258 Dist 14 Luck 218
 — 529 (F.B.) Ref I.L.R. 1939
 Mad 803
 5 Bom 143 Dist I.L.R. 1939
 Nag 607
 — 154 Ref (1939) 1 M.L.J.
 520
 — 232 Ref (1939) 2 M.L.J.
 649
 — 614 Ref 14 Luck 49
 — 630 Ref I.L.R. 1939 Bom.
 245=41 Bom L.R. 208
 — 647 Ref 1939 Rang L.R.
 358.
 6 Bom 26 Foll. 18 Pat. 355
 — 34 Ref I.L.R. 1939 Kar.
 449
 — 42 at 50 Dictum of Sir
 Raymond West Appr.
 (1939) 2 M.L.J. 444 (P.C.).
 7 Bom 15 Ref I.L.R. 1939 All.
 510
 — 146 Appr. 43 C.W.N. 641
 =41 Bom L.R. 742=1939
 Rang L.R. 352 (P.C.)
 — 301 Foll. 18 Pat. 366
 — 316 Ref 41 Bom L.R. 170
 8 Bom 529 Appr. I.L.R. 1939 All
 647.
 9 Bom 259 Ref I.L.R. 1939 Kar.
 134
 — 288 Ref 41 Bom L.R. 98.
 10 Bom 193 Dist 14 Luck 322
 — 200 Ref 1939 Rang L.R.
 134
 — 220 Ref I.L.R. 1939 Lah.
 433
 11 Bom 551 (P.C.) Ref I.L.R.
 1939 Mad 776; Ref I.L.
 R. 1939 Kar 422.
 — 566 Ref I.L.R. (1939) 1
 Cal 241
 12 Bom 101 Ref I.L.R. 1939
 Bom 232=41 Bom L.R.
 249
 — 161 Rel. I.L.R. 1939 Kar.
 648
 — 422 Dist 1939 A.L.J. 173
 — 561 Ref I.L.R. (1939) 1
 Cal 162=43 C.W.N. 120
 13 Bom 343 Ref I.L.R. 1939 Nag.
 200
 14 Bom 97 Rel. I.L.R. (1939) 1
 Cal 574.
 — 165 Foll. 1939 A.L.J. 1011.
 — 269 Dist 1939 Rang L.R.
 403
 — 431 Dist 1939 Rang L.R.
 403; Foll. I.L.R. 1939 Ec
 82

- 14 Bom 463 1 Foll I L R 1939
Bom 512=41 Bom I R
760 Ref I L R 1939 Nag
88
- 15 Bom 13 Ref 41 Bom I R 921
67 Ref I L R 1939 Kar
393
93 Dist 41 Bom L R 959
43 C W N 1015
155 Ref 1939 I C R 159
194 (Parson's judgment)
101 18 Pat 485
191 Ref 41 Bom L R 98
- 16 Bom 338 Appr I L R 1939
All 217
592 Dist I L R 1939 Nag
580
661 Dist I L R 1939 Bom
42
683 Appr I L R 1939 All
162
- 17 Bom 100 Ref I I R 1939
Bom 314=41 Bom L R
333
- 18 Bom 19 Ref I L R 1939 Mad
566=(1939) 1 M L J 588
100 Foll 41 Bom L R
425
119 Dist I L R 1939 Bom
154 101 41 Bom L R
215
260 Ref I I R 1939 Mad
303
495 Ref 41 Bom L R 836
534 Ref I L R 1939 Mad
226=(1939) 1 M L J 23
- 19 Bom 51 Ref I L R 1939 Kar
41
245 Rel I I R (1939) 2
Cal 1
303 Ref 41 Bom I R 561
- 20 Bom 53 Ref 41 Bom L R
825
61 101 I L R 1939 Nag
592
99 Ref 41 Bom L R 353
306 Ref I L R 1939 Nag
88
338 Ref I L R 1939 Bom
232=41 Bom L R 249
317 Ref 1939 Rang L R
397
460 Ref 14 Iuck 49
- 21 Bom 63 Foll 41 Bom I R 417
195 Ref 14 Iuck 459
279 Ref I L R 1939 Kar
121
412 Ref I I R 1939 Bom
232
639 Ref 41 Bom L R 470
- 22 Bom 112 101 1939 Rang L R
239
289 Ref I I R 1939 Mad
566
646 Dist 1939 Rang I R
451
- 23 Bom 213 Foll I I R 1939
Bom 42
237 Rel I L R 1939 Nag
548
- 23 Bom 442 Foll 1939 Rang L
R 686
608 Ref I L R 1939 Mad
242
725 (P C) Foll I L R
1939 Nag 624
- 24 Bom 188 Ref I L R 1939 Nag
580
100 Ref I L R 1939 Mad
853
591 Ref I L R 1939 Kar
18
- 25 Bom 263 Ref I L R 1939
Mad 242
332 Ref I I R 1939 All
424=1939 A, L J 367
337 (P C) Foll I L R
1939 Nag 1
- 26 Bom 174 Ref (1939) 1 M I J
520
221 Ref I I R (1939) 2
Cal 33 43 C W N 604=
41 Bom L R 391=(1939)
1 M L J 664
552 Rel I L R 1939 Kar
330
782 Ref I I R 1939 All
617
- 27 Bom 31 Dist I L R 1939 Nag
293
292 Appr I L R 1939
Bom 232=41 Bom L R
249
- 28 Bom 201 Ref I I R 1939 Kar
597
264 Ref I L R (1939) 2
Cal 143=43 C W N 1197
420 Ref I L R 1939 Bom
149=41 Bom L R 191
644 Rel I L R 1939 Nag
413
- 29 Bom 229=7 Bom L R 131
Foll 41 Bom I R 413
386 Foll I L R 1939 Bom
53
391 Expt I L R (1939) 1
Cal 283=41 Bom L R
672=(1939) 1 M L J 544
(P C)
405 Foll 18 Pat 155
149=7 Bom L R 527 Ref
41 Bom L R 98
- 30 Bom 40=7 Bom L R 633 Ref
41 Bom L R 98
333 Reviewed 18 Pat 590
591 Ref (1939) 1 M L J
745
593 Rel I L R (1939) 1
Cal 81
- 31 Bom 604 Ref 1939 Rang L R
50=(1939) 2 M I J 604
- 32 Bom 50 Appr (1939) 2 M L J
884 (I R)
81 Ref I L R 1939 Nag
592, 43 C W N 295
318=10 Bom L R 297 Ref
41 Bom L R 589
356 Ref I L R 1939 Kar
134
- 32 Bom 381 Disc I L R 1939
Mad 820=(1939) 2 M L
J 653
109 Rel I L R 1939 Bom
97=41 Bom L R 239, Re-
viewed 18 Pat 590
432 Dist I L R 1939 Kar
330
479 Ref I L R 1939 Nag
465
- 33 Bom 69 Ref 1939 Rang L R
280
221 Rel I L R 1939 Kar
64
264 Chandavarkar J's ob-
servations discussed and
Doubted I L R 1939 Mad
853=(1939) 2 M L J 822
339 Ref I L R 1939 Kar
85
411 Ref I L R 1939 Nag
1
658 Foll I L R 1939 Nag
300
669=41 Bom L R 797 Ref
41 Bom I R 845
- 34 Bom 326 Ref I L R 1939 Bom
160=41 Bom L R 277
358 Not Foll I L R 1939
Nag 229
408=12 Bom L R 223
Ref 41 Bom I R 994
506 Rel I L R 1939 Nag
548
- 35 Bom 75=12 Bom L R 956
Dist 41 Bom I R 497
79 Not Foll I L R 1939
Mad 803 (F B)=(1939)
1 M L J 802
310=13 Bom L R 352
Foll 41 Bom L R 417
- 36 Bom 42 Rel I L R 1939 Lah
470
156 Not reconcilable with
38 Bom I R 719 I L R
1939 Bom 420, Ref I L
R 1939 Bom 133 Diss
41 Bom L R 463, 18 Pat
404 Foll 41 Bom L R 176
41 Bom L R 997
339=14 Bom L R 89 (F
B) Foll 41 Bom L R 239,
Reviewed 18 Pat 590
368 No longer good law
I I R 1939 Bom 87
424 Foll I L R 1939 Nag
465
- 37 Bom 178 Ref I I R 1939
Bom 160=41 Bom L R
277
280 Ref 43 C W N 1059
295=14 Bom I R 176
Foll 41 Bom L R 239
506 Ref I I R 1939 Nag
124
508 Ref I I R 1939 Nag
88
- 38 Bom 156 Reviewed 18 Pat 82
607 Ref I L R 1939 Nag
250

- 39 Bom 182 Rel 14 Luck 78
 — 507-17 Bom L.R. 522
 Dist 41 Bom L.R. 1104
 — 538 Dist 1939 A.L.J. 173
 — 572 Dist. I.L.R. 1939 Bom.
 154
 — 604 (F.B.) Ref I.L.R. 1939
 Maj 703 = (1939) 2 M.L.
 J 135 (F.B.)
 40 Bom 126 = 17 Bom L.R. 935
 Ref 41 Bom L.R. 590
 — 235 Foll I.L.R. 1939 Bom
 493-41 Bom L.R. 584
 — 399 Ref I.L.R. 1939 Nag
 250
 — 461 Ref I.L.R. 1939 Mad
 19
 — 504-18 Bom. L. R. 481
 Ref 41 Bom.L.R. 1034
 41 Bom 1-18 Bom L.R. 185
 Ref 41 Bom.L.R. 93
 — 64 Dist I.L.R. (1939) 2
 Cal 291-43 C.W.N. 999-
 — 181 Ref I.L.R. (1939) 2
 Cal 12-43 C.W.N. 656
 (P.C.)
 — 347-19 Bom L.R. 69 Foll
 41 Bom L.R. 631, Ref 41
 Bom L.R. 268
 — 550 Dist 1939 Rang L.R.
 39
 42 Bom. 93 Ref I.L.R. (1939) 2
 Cal 226-43 C.W.N. 831-
 — 172 Foll I.L.R. 1939 Nag
 419
 — 309 Foll. 18 Pat. 395.
 — 380 Dist. I.L.R. 1939 All
 577 = 1939 A.L.J. 440
 — 535 Foll. I.L.R. 1939 Nag.
 165
 43 Bom. 221 Ref 1939 Rang.L.R.
 50
 — 235 Ref I.L.R. 1939 Nag.
 104, I.L.R. 1939 Nag. 492.
 — 368 Rel. I.L.R. 1939 Kar.
 160
 — 412 Appr. I.L.R. 1939
 Bom 232-41 Bom L.R.
 249
 — 472-21 Bom.L.R. 213 Foll.
 41 Bom L.R. 631; Ref. 41
 Bom L.R. 268.
 — 519 Dist. I.L.R. 1939 Kar
 99.
 — 575 Foll 18 Pat 141
 — 612-21 Bom L.R. 435
 Ref 41 Bom L.R. 589
 — 631 Rel 1939 A.L.J. 542
 — 707-21 Bom L.R. 770
 Ref 41 Bom L.R. 1104
 — 716 Rel I.L.R. 1939 Kar.
 160
 — 735 Foll 18 Pat. 210
 — 778 (P.C.) Ref I.L.R.
 1939 Nag 88
 44 Bom. 297-22 Bom L.R. 203
 Ref 41 Bom L.R. 760
 — 341-22 Bom L.R. 120
 Ref 41 Bom L.R. 268
 — 472 Rel. I.L.R. 1939 Kar
 417.
 — 555 Ref 1939 Rang L.R.
 676.
 44 Bom 595 Rel I.L.R. 1939
 Kar 330
 — 600-22 Bom L.R. 793
 Ref 41 Bom L.R. 1077
 — 627-22 Bom L.R. 817
 Ref 41 Bom L.R. 268
 — 673 Not Foll I.L.R. 1939
 Nag 530
 — 690-22 Bom.L.R. 399
 Foll 41 Bom L.R. 757
 — 702 Rel I.L.R. 1939 Nag.
 492
 — 705 Dist I.L.R. 1939 All.
 237
 — 931-22 Bom.L.R. 916 No
 longer good law. 41 Bom
 L.R. 497
 45 Bom 245 Ref. 1939 Rang L.R.
 280; I.L.R. 1939 Nag 250
 — 369 Rel I.L.R. 1939 Nag
 492
 — 443 Rel 1939 A..L.J. 460
 — 607 Ref 1939 Rang.L.R.
 639
 — 668-22 Bom L.R. 1239
 Disappr. 41 Bom L.R. 98.
 — 955 Foll 18 Pat 654
 — 1027 Not Foll I.L.R. 1939
 Nag 580
 — 1004-23 Bom L.R. 455
 Foll 41 Bom L.R. 997
 — 1141 (F.B.) Expl. I.L.R.
 1939 Bom 428-41 Bom.
 L.R. 578
 — 1242 Ref 1939 Rang L.R.
 622.
 46 Bom. 200 Rel I.L.R. 1939 Kar.
 307.
 — 384-23 Bom L.R. 1098
 Ref 41 Bom.L.R. 205
 — 592 Ref 14 Luck 492
 — 646 Ref I.L.R. 1939 Bom.
 19.
 — 764-24 Bom L.R. 267
 Ref 41 Bom.L.R. 205
 47 Bom 146 (P.C.) Ref I.L.R.
 1939 Mad 507
 — 244 Ref I.L.R. 1939 Mad
 611
 — 290-25 Bom.L.R. 45
 Ref 41 Bom L.R. 470.
 — 712 Appr. I.L.R. 1939
 Bom 232-41 Bom L.R.
 249
 — 764 Ref I.L.R. 1939 Bom.
 27.
 48 Bom. 348 Dist. I.L.R. 1939
 Bom. 478-41 Bom L.R.
 575
 — 411 (P.C.) Ref I.L.R. 1939
 Nag 624
 — 510 Ref 18 Pat 544; Rel
 I.L.R. 1939 Kar 75
 — 515 Rel I.L.R. (1939) 1
 Cal. 187-43 C.W.N. 133
 — 541 Foll. I.L.R. 1939 Lah
 183
 — 550 (F.B.) Rel. I.L.R. 1939
 Lah. 295
 49 Bom 388 (F.B.) Dist. I.L.R.
 1939 Nag 293
 49 Bom. 535-37 Bom L.R. 423
 Foll 41 Bom L.R. 485
 — 554 Foll I.L.R. 1939 Bom
 482-41 Bom L.R. 760
 — 695 Rel I.L.R. 1939 Kar
 502
 — 692 Ref I.L.R. 1939 Kar
 64
 50 Bom 56 Foll I.L.R. 1939 Bom
 42.
 — 162 Ref 1939 Rang L.R.
 479
 — 204-28 Bom L.R. 765
 Comm 41 Bom.L.R. 631.
 — 236-28 Bom L.R. 736
 Foll 41 Bom L.R. 417.
 — 344 Rel I.L.R. 1939 Nag
 488
 — 357 Ref I.L.R. 1939 Kar.
 121.
 — 402 Dist I.L.R. 1939 Nag
 569
 — 616 Disappr. I.L.R. 1939
 Mad 708 (F.B.); I.L.R.
 1939 Mad 714 (P.C.)
 — 716 Ref 14 Luck 351
 51 Bom 50 Rel I.L.R. (1939) 1
 Cal 592-43 C.W.N. 745
 — 329 Ref 14 Luck 360;
 Rel I.L.R. 1939 Kar 314-
 — 430 (F.B.) Rel I.L.R. 1939
 All 549, 1939 A.L.J. 278;
 I.L.R. 1939 Bom. 556; 41
 Bom L.R. 947; I.L.R. 1939
 Kar. 314, 14 Luck 335;
 1939 Rang L.R. 668 (F.B.)
 — 450 Rel. I.L.R. 1939 All.
 602 = 1939 A.L.J. 450
 — 725 (P.C.) Dist. I.L.R.
 1939 Nag. 200; I.L.R. 1939
 Nag 206
 — 725-53 M.L.J. 81 (P.C.)
 Ref (1939) 1 M.L.J. 588
 — 855 Foll I.L.R. (1939) 1
 Cal 212-43 C.W.N. 290.
 — 908 (F.B.) Dist I.L.R.
 1939 Nag 250; 1939 Rang
 L.R. 280
 — 971 (F.B.) Foll. I.L.R.
 1939 Lah 255
 52 Bom 37-29 Bom L.R. 1551
 Foll 41 Bom L.R. 6
 — 72 Ref I.L.R. 1939 Nag
 276
 — 165 Ref I.L.R. 1939 Kar.
 648
 — 184 Dist. I.L.R. 1939 Bom
 154-41 Bom L.R. 215
 — 228 Dist. I.L.R. 1939 Nag
 569
 — 307-30 Bom L.R. 427
 Ref 41 Bom L.R. 268
 — 313 (P.C.) Foll I.L.R.
 1939 Nag 266
 — 376 Rel I.L.R. 1939 Kar.
 300
 — 444 Ref I.L.R. 1939 Bom
 389
 — 542 Not Foll I.L.R. 1939
 Nag 347.
 — 898 Ref. 1939 Rang L.R.
 117

- 40 Bom L R 455 Ref I L R 1939
Bom 284
—559 (F B) Foll & Expl
41 Bom L R 208
—787 (P C) Ref & Expl
41 Bom L R 98
—876 Ref 41 Bom L R 1007
—946 Ref 41 Bom L R 779
—952 Foll I L R 1939 Nag
607
—964 Ref 41 Bom L R 219
—968 Ref 41 Bom L R 455,
I L R 1939 Nag 235
—1001 Ref I L R 1939
Bom 71
—1134 Ref I L R 1939 Bom
9
—1185 Ref 41 Bom L R
760
—1205 Ref I L R 1939 Kar
597
—1266 Ref & Diss 1939
Rang L R 403
41 Bom L R 176 Foll 41 Bom L
R 997
—939 Rel 41 Bom L R
1015

I L R CALCUTTASRIES

- 1 Cal 92 Reviewed 18 Pat 13
—226 Rel I L R 1939 All
647—1939 A L J 522
2 Cal 301=19 C W N 250 Ref
43 C W N 34
—327 (P C) Foll 41 Bom L
R 371
3 Cal 224 Ref 43 C W N 877
—758 Ref 1939 Rang L R
117
—806 (P C) Ref I L R 1939
Nag 357, 1939 Rang L R
649
4 Cal 172 (P C) Ref I L R 1939
Mad 708 (F B)
—327 Ref I L R 1939 Bom
173
—369 Ref I L R (1939) 2
Cal 226=43 C W N 831
—483 (F B) Reviewed 18
Pat 82
—531 Ref 1939 F C R 159
—583 Foll 18 Pat 366
5 Cal 110 Appr I L R 1939 All
647
—132 Ref 1939 Rang L R
294
—148 (P C) Foll 18 Pat
499, Ref I L R 1939 Mad
422
—256 Ref I L R 1939 Mad
620
—314 Appr I L R 1939 All
647
—500 Ref 14 Luck 366
—776 (P C) Rel I L R 1939
Nag 383
—867 Reviewed 18 Pat 13
—921 Ref 14 Luck 467

- 6 Cal 8 (F B) Ref (1939) 1 M L
J 588
—17 Diss 1939 Rang L R
383
—94 Dist 18 Pat 459
—585 Ref 1939 Rang I R
108
—764 (P C) Foll I L R
1939 Nag 383
—815 Ref I L R 1939 Nag
515
7 Cal 140 Rel I L R 1939 Nag
592
—499 Ref 14 Luck 351,
I L R 1939 Nag 200
—616 Ref (1939) 2 M I J.
686
—665 Ref I L R 1939 All
67
8 Cal 63 Ref I L R 1939 Mad
708—(1939) 2 M I J 135
(F B)
—302 (P C) Ref I L R 1939
Nag 88
—370 Ref I L R 1939 Bom
232—41 Bom L R 249
—530 Foll I L R 1939 Mad
600=(1939) 2 M L J 72
—597 (F B) Rel I L R 1939
Lah 261
—645 Diss I L R 1939 Kar
632
—757 Ref 14 Luck 346
—910 Appr I L R 1939 All
647
9 Cal 563 (F B) Reviewed 18 Pat
500
—725 Reviewed 18 Pat 590
10 Cal 265 Appr 1939 All 647
—443 Ref (1939) 1 M L J
544=66 I A 50=(1939) 1
Cal 283=43 C W N 281
—41 Bom L R 672 (P C)
—557 Ref I L R 1939 All
519
—612 Ref 43 C W N 969
—697 Ref 14 Luck 467
—1035 (P C) Ref I L R
1939 Mad 600
—1073 Ref I L R 1939 Lah
261
11 Cal 121 (P C) Dist I L R
1939 Nag 293
—213 Ref I L R 1939 Bom
396
—429 Diss 1939 Rang L R
388
—680 Dist 41 Bom L R 631
12 Cal 69 Ref I L R 1939 Bom
340
—330 Appr 1939 A L J 697
=41 Bom L R 742=43 C
W N 641=1939 Rang L
R 358 (P C)
—536 Rel 43 C W N 612
13 Cal 21 (P C) Expl I L R
1939 Mad 853
—104 Dist 1939 Rang L R
686 Rel 43 C W N 1139
—136 (P C) Rel I L R
1939 Nag 580

- 18 Cal 171 Ref 41 Bom L R 1097
—292 Dist I L R (1939) 2
Cal 33=43 C W N 604
—308 (I C) Ref I L R 1939
Nag 624
—322 Ref 1939 Rang L R
403
14 Cal 365 Ref 14 Luck 78
—661 Foll I L R (1939) 1
Cal 493=43 C W N 453
—757 Dist I L R 1939 Kar
401
—781 Reviewed 18 Pat 13
15 Cal 20 (P C) Expl I L R
1939 Kar 140
—54 Ref I L R (1939) 1 Cal
21=43 C W N 4
—64 Rel I L R (1939) 1
Cal 574
—402 Ref 14 Luck 322
—488 (F B) Ref I L R 1939
Nag 357
—608 (I B) Ref I L R 1939
Kar 370
—667 Foll I L R (1939) 1
Cal 493=43 C W N 453
—684 (P C) Rel 1939 A L
J 235
16 Cal 465 Rel I L R 1939 All
97
—523 Ref 1939 Rang L R
207
—540 Appr I L R 1939 All
313
—758 (P C) Ref I L R 1939
Lah 336
—794 Expl I L R (1939) 1
Cal 530=43 C W N 539
17 Cal 3 (P C) Foll 18 Pat 171
—122 (P C) Ref I L R 1939
Nag 88
—268 Appr I L R (1939) 2
Cal 33
—301 Ref 18 Pat 676
—574 Rel I L R 1939 Kar
241
—580 (P C) Ref I L R 1939
Nag 515
—699 (F B) Diss I L R,
(1939) 1 Cal 493=43 C
W N 453 Foll 18 Pat
670
—711 (F B) Rel I L R 1939
Nag 548
—826 Ref 14 Luck 459
18 Cal 23 (P C) Rel I L R 1939
Nag 510
—99 Rel 1939 A L J 757
—151 (P C) Ref I L R
1939 Nag 465
—242 Ref I L R (1939) 2
Cal 143=43 C W N 1197
—264 Ref I L R (1939) 2
Cal 12=43 C W N 656
(P C)
—327 Dist I L R (1939) 1
Cal 592=43 C W N 745
—639 Foll 1939 Rang L R
152=18 Pat 318
19 Cal 13 Foll I L R (1939) 1
Cal 493=43 C W N 453
—84 Ref 14 Luck 366

- 19 Cal 240 Ref I L R 1939 Kar 18
 — 253 Ref I L R 1939 Kar 18
 — 346 Ref I L R (1939) 1
 Cal 21 = 43 C W N 4
 — 653 (P C) Dist I L R 1939 Lah 205, Ref I L R 1939 All 354
 — 774 Ref 43 C W N 673
 20 Cal 8 (P C) Dist I L R 1939 Nag 557
 — 79 (P C) Ref I L R 1939 Nag 544
 — 260 Ref 41 Bom L R 836
 — 273 Dist 18 Pat 370
 — 314 Appr I L R 1939 All 647
 — 470 Dist I L R 1939 Kar 140
 — 487 (P C) Ref I L R 1939 Nag 624
 — 732 Ref 41 Bom L R 1097
 — 906 Ref I L R (1939) 1 Cal 349
 21 Cal 8 (P C) Ref I L R 1939 Nag 624
 — 142 Dist I L R 1939 All 24
 — 200 Appr I L R 1939 All 162
 — 639 Foll I L R (1939) 1 Cal 493 = 43 C W N 453
 — 827 Ref I L R 1939 Nag 592
 22 Cal 8 Diss I L R 1939 Bom 340 = 41 Bom L R 59
 — 143 Ref I L R (1939) 1 Cal 21 = 43 C W N 4
 — 222 (P C) Foll 41 Bom L R 818
 — 371 Foll I L R (1939) 1 Cal 493 = 43 C W N 453
 — 909 (P C) Ref 1939 Rang. L R 227
 — 938 Foll 18 Pat 502
 23 Cal 502 Dist 1939 Rang L R 570
 — 775 (P C) Ref I L R 1939 Nag 312
 — 867 Disappr I L R (1939) 1 Cal 574 = 43 C W N 775
 — 975 Ref 18 Pat 544
 — 980 Ref 43 C W N 4
 24 Cal 20 Dist I L R 1939 Nag 607
 — 62 Rel I L R 1939 Nag 518
 — 143 Rel I L R (1939) 1 Cal 349 = 43 C W N 57
 — 348 Ref 1939 Rang L R 403
 — 364 Ref I L R 1939 Lah 131
 — 616 (P C) Ref 41 Bom L R 1084
 — 901 Dist I L R 1939 Nag 488
 — 865 (P C) Ref 1939 Rang. L R 581
 24 Cal 829 Dist I L R (1939) 1 Cal 112
 — 829 Foll I L R (1939) 2 Cal 68
 25 Cal 522 Ref I L R 1939 Kar 118
 26 Cal 74 Rel I L R (1939) 2 Cal 12
 — 81 (P C) Ref 1939 A L J 642
 — 311 Ref I L R 1939 Nag 580
 — 653 Diss 1939 A L J 394
 — 727 Dist I L R 1939 Lah 103
 — 734 Ref I L R 1939 Nag 104
 — 839 Ref I L R (1939) 1 Cal 21 = 43 C W N 4
 27 Cal 34 Rel I L R 1939 Nag 548
 — 38 Ref I L R 1939 Bom 109
 — 144 Rel I L R 1939 Nag 488
 — 169 Diss 1939 Rang L R 388
 — 290 Dist I L R (1939) 2 Cal 330
 — 351 Ref I L R (1939) 2 Cal 143 = 43 C W N 1197
 — 810 Ref I L R 1939 Nag 104
 28 Cal 206 = 5 C W N 310 Ref 43 C W N 1102
 — 246 = 5 C W N 607 Ref I L R (1939) 1 Cal 21 = 43 C W N 4
 — 427 Ref I L R (1939) 2 Cal 68
 — 689 Ref I L R 1939 Kar 677
 29 Cal 68 Diss I L R (1939) 2 Cal 1, Ref I L R 1939 Lah 424
 — 154 (P C) Ref I L R 1939 Mad 600
 — 167 (P C) Ref I L R 1939 Nag 250, Ref 18 Pat 193
 — 187 (P C) Ref I L R 1939 Kar 18
 — 428 (F B) Foll 18 Pat 155
 — 433 Ref 1939 Rang L R 548 (P C)
 — 518 Ref I L R 1939 All 454 = 1939 A L J 94; I L R 1939 Kar 18; I L R 1939 Mad 803 (F B)
 — 664 = 4 Bom L R 547 (P C) Foll 41 Bom L R 497
 — 735 Ref 43 C W N 962
 30 Cal 36 Ref 1939 A L J 757
 — 107 Dist I L R 1939 Nag 170
 — 317 Ref I L R 1939 Nag 216
 — 453 Ref 43 C W N 248
 — 539 (P C) Ref I L R 1939 Mad 776; I L R 1939 Nag 1; Rel I L R 1939 Mad 203
 30 Cal 556 Dist I L R 1939 All 607 = 1939 A L J 308
 — 576 Ref 1939 A L J 85
 — 1021 = 7 C W N 774 (P C)
 — Ref 43 C W N 519, Rel 18 Pat 708
 31 Cal 11 (P C) Ref I L R 1939 Nag 526
 — 57 (P C) Ref I L R 1939 Nag 636
 — 83 1011 18 Pat 459
 — 89 Ref I L R (1939) 1 Cal 21 = 43 C W N 4
 — 307 Ref I L R 1939 Kar 107
 — 503 (P C) Foll I L R 1939 Nag 580
 — 993 (F B) Ref I L R 1939 All 6
 32 Cal 129 (P C) Foll 18 Pat 171; Ref I L R 1939 Nag 548
 — 229 = 9 C W N 300 Dist 43 C W N 43
 — 296 (P C) Dist 18 Pat 708
 — 386 Rel I L R (1939) 1 Cal 349 = 43 C W N 57
 — 605 Rel 1939 A L J 757
 — 643 Not Foll I L R 1939 Nag 246
 — 861 Rel I L R (1939) 1 Cal 63
 — 935 Ref 1939 Rang L R 294
 33 Cal 116 (P C) Foll I L R 1939 Nag 413
 — 425 Ref 43 C W N 1126
 — 537 (P C) Ref I L R 1939 Nag 324
 — 812 = 10 C W N 788 Ref 43 C W N 187
 — 857 Ref 14 Luck 106
 34 Cal 51 (F B) Foll I L R 1939 Bom 140 = 41 Bom L R 168
 — 118 = 9 Bom L R 85 (P C) Ref 41 Bom L R 875
 — 199 Rel I L R 1939 Lah 103
 — 207 Ref I L R 1939 Bom 71
 — 209 Rel I L R 1939 All 103
 — 257 Ref 43 C W N 874; Rel (1939) 1 M L J 776
 — 427 Dist 18 Pat 279
 — 491 Dist I L R (1939) 2 Cal 291 = 43 C W N 999
 — 929 Rel I L R 1939 Lah 196
 — 935 Rel I L R 1939 Kar 662
 — 954 Dist I L R 1939 All 167
 — 971 Ref 14 Luck 366
 — 999 = 11 C W N 889 Rel 43 C W N 575

- 34 Cal 1059 Ref 1939 A L J 128
 35 Cal 202 = 12 C W N 169 (P
 C) Expl 43 C W N 609,
 Rel I L R 1939 Nag 422,
 18 Pat 323
 — 209 Ref I L R 1939 Bom
 173
 — 431 Foll I L R 1939 Nag
 261
 — 551 (P C) Dist & Foll
 I L R 1939 Nag 1, Ref
 I L R 1939 Kar 632
 I L R 1939 Mad 30 Rel
 1939 A L J 389
 — 561 = 12 C W N 598 Ref
 43 C W N 962
 — 767 Ref I L R (1939) 1
 Cal 21 = 43 C W N 4
 — 924 Dist I L R (1939) 2
 Cal 316 = 43 C W N 1074
 — 1039 (P C) Foll I L R
 1939 Nag 465
 36 Cal 28 = 42 C W N 1063 Ref
 43 C W N 271
 — 193 Ref I L R 1939 Bom
 472
 — 345 Dist I L R (1939) 2
 Cal 341 = 43 C W N 953
 — 780 (P C) Ref I L R 1939
 Nag 194
 37 Cal 179 Reviewed 18 Pat 417
 — 214 Reviewed 18 Pat 590
 — 362 Ref I L R 1939 All
 24
 — 526 = 14 C W N 974 Ref
 43 C W N 1084
 — 559 Ref I L R 1939 Mad
 306 = 43 C W N 469
 (1939) 1 M L J 143
 — 870 Reviewed 18 Pat 417
 38 Cal 153 Ref I L R 1939 Kar
 111
 — 169 Rel I L R 1939 Kar
 449
 — 559 Reviewed 18 Pat 82
 — 622 Ref I L R 1939 Nag
 104
 — 694 Cons (1939) 2 M L J
 805
 — 797 Foll I L R 1939 Mad
 843 = (1939) 1 M L J 784
 — 880 Rel I L R (1939) 1
 Cal 574 = 43 C W N 775
 — 913 Dist 43 C W N 537
 39 Cal 33 Ref 43 C W N 435
 — 104 Dist I L R (1939) 1
 Cal 493 Foll 18 Pat 670,
 Ref 43 C W N 453 512
 — 232 (P C) Ref I L R 1939
 Mad 776
 — 278 = 16 C W N 6 (F B)
 Ref 43 C W N 356
 — 298 Rel I L R 1939 Nag
 548
 — 319 Reviewed 18 Pat 590
 — 418 (P C) Ref I L R 1939
 Nag 624
 — 527 (P C) Dist 18 Pat
 342
 — 582 Cons (1939) 2 M L J
 805
 39 Cal 615 Foll I L R 1939
 Nag 408
 — 704 Ref 14 Luck 176
 — 766 Ref 1939 Rang L R
 686 43 C W N 1139
 — 789 Ref 1939 Rang L R
 194
 — 862 Ref I L R 39 Cal 862
 46 Bom L R 589
 — 925 Ref 41 Bom L R
 1084
 40 Cal 21 Rel I L R 1939 Nag
 124
 — 283 Ref 66 I A 177
 — 318 Ref 41 Bom L R 98
 — 537 Ref I L R 1939 Kar
 134
 — 570 Ref (1939) 1 M L J
 635
 — 588 Ref 41 Bom I R 911
 — 635 Ref I L R 1939 Nag
 357
 — 814 Ref 1939 Rang L R
 18
 — 898 Ref 1939 Rang L R
 224
 41 Cal 92 Rel 43 C W N 488
 — 137 Dist I L R 1939 Kar
 422
 — 173 Ref 14 Luck 492
 — 342 Dist I L R 1939 All
 329
 — 418 Rel I L R 1939 Nag
 518
 — 590 (P C) Foll I L R
 1939 Nag 350 Ref I L R
 1939 All 385
 — 972 (P C) Appl I L R
 1939 Nag 64
 — 1023 = 18 C W N 785 (P
 C) Rel 43 C W N 133
 — 1125 Foll 18 Pat 1
 42 Cal 56 Expl & Dist I L R
 1939 All 24
 — 172 = 18 C W N 971 (F B)
 Ref 43 C W N 379
 — 217 Ref 43 C W N 978
 — 351 Foll 41 Bom L R 757
 — 422 Not Foll I L R 1939
 Nag 109
 — 440 Dist I L R 1939 Nag,
 548
 — 612 = 19 C W N 184 Ref
 43 C W N 25
 — 708 Ref 1939 Rang L R
 445
 — 826 Reviewed 18 Pat 13
 — 1153 Cons I L R 1939
 Bom 42
 43 Cal 115 Ref I L R 1939 Mad
 30 I L R 1939 Nag 1
 — 467 Reviewed 18 Pat 417
 — 521 (P C) Rel I L R 1939
 Kar 136 269
 — 574 Ref I L R 1939 Mad
 226 = (1939) 1 M L J 23
 — 560 = 18 Bom L R 418
 Ref I L R 1939 All 103
 I L R 1939 Bom 9 173
 — 665 Ref I L R (1939) 2
 Cal 349
 43 Cal 790 Foll I L R 1939
 Nag 1
 — 903 (F B) Ref I L R 1939
 Bom 27 = 41 Bom L R
 485
 — 944 Ref I L R 1939 Bom
 314
 44 Cal 61 Ref 41 Bom L R 84
 — 352 Dist 41 Bom L R 787
 — 388 Ref I L R 1939 All
 313 = 1939 A L J 362
 — 567 Dist 14 Luck 456 Ref
 I L R 1939 Nag 235
 — 573 (P C) Dist 18 Pat
 133
 — 650 Dist I L R (1939) 1
 Cal 318 = 43 C W N 279
 — 662 = 19 Bom L R 424 (P
 C) Ref 41 Bom L R 1104
 — 759 (P C) Foll I L R
 1939 Nag 1 18 Pat 654
 — 30 Dist I L R (1939) 1
 Cal 152 = 43 C W N 52
 Ref 1939 Rang L R 134
 45 Cal 111 Rel I L R 1939 Nag
 229
 — 320 Rel I L R 1939 Kar
 530
 — 388 Ref 1939 Rang L R
 479
 — 502 Ref I L R 1939 Nag
 124
 — 653 Disappr I L R (1939)
 1 Cal 283 = 43 C W N 281
 — 41 Bom L R 672 = 66
 I A 50 = (1939) 1 M L J
 544 (P C) Ref (1939) 1
 M L J 692
 — 785 Rel I L R (1939) 2
 Cal 291 43 C W N 999
 — 873 Foll I L R 1939 All
 382 = 1939 A L J 166
 — 878 Dist I L R 1939 All
 89
 46 Cal 189 (P C) Rel I L R
 1939 Nag 510
 — 432 Dist I L R (1939) 1
 Cal 587 = 43 C W N 580
 Dis 1939 Rang L R 117
 — 520 Ref I L R 1939 Kar
 469
 — 566 Ref I L R 1939 Kar
 632
 — 651 Ref 14 Luck 116
 — 670 (P C) Rel 18 Pat
 654
 — 694 = 21 Bom L R 611
 Ref I L R 1939 Bom 173
 — 700 Rel I L R 1939 Kar
 449
 — 804 Disappr I L R 1939
 Mad 384 = (1939) 1 M L
 J 350 = I L R 1939 Lah
 201
 — 861 Foll I L R (1939) 2
 Cal 349
 — 1070 Ref I L R (1939) 1
 Cal 212 = 43 C W N 290
 47 Cal 300 Not Appr I L R 1939
 All 647 = (1939) A L J 522

47 Cal 418 Ref I L R 1939 Mad
496=(1939) 1 M L J 730
485 Ref I L R 1939 All
435; I L R. 1939 Nag
607
515 Foll. 18 Pat 401
492 Reviewed 18 Pat 417
343 Ref I L R 1939 All
173
849 Ref I L R 1939 Lah
351
418 Ref 1939 F C R 159,
1939 F C R 193
48 Cal. 30 Ref I L R 1939 All
496=1939 A L J 213, I L
R 1939 Mad 507, 1939
Rang L R 518 (P C)
573 Ref I L R (1939) 1
Cal 574
481 Ref 1939 F C R 159
509 (P C) Appl I L R
1939 Nag 64, Dist 18 Pat
429
812 (P C) Rel I L R 1939
Nag 191
916 Ref 1939 A L J 757
1105 Foll I L R 1939
Nag 393
49 Cal 277 Foll I L R 1939 Nag.
109
358 Foll I L R 1939 Nag
109
573 Cons I L R 1939
Bom 42
603 Foll I L R 1939 Nag
250; 1939 Rang L R. 280.
886 Ref I L R (1939) 2
Cal 163=43 C W N 862
999 (P C) Ref 1939 Rang
L R 686
1026 Foll 18 Pat 204
1035 Appr. I L R. 1939
All. 424=1939 A L J. 367.
50 Cal. 1 (P C) Ref I L R 1939
Kar. 393
94 Ref 41 Bom L R 98
115 Foll I L R (1939) 1
Cal 452=43 C W N 383
297 Foll I L R 1939 Bom.
271.
370=37 G L J 233 Dist
43 C W N 395
849 Foll I L R 1939 Kar
165.
929 (P C) Dist. I L R.
1939 Nag 1
992 Appr 1939 F C R.
159
51 Cal 337 Foll I L R 1939 Nag
478, 14 Luck 40
495 Ref I L R 1939 Mad
374=(1939) 1 M L J 163,
Rel I L R 1939 Nag. 357.
548 Ref I L R. 1939 Mad.
803 (F B)=(1939) 1 M L
J. 802
969 Expl I L R 1939 All.
443=1939 A L J 730, Dist.
1939 A L J 62.
972 Dist I L R (1939) 2
Cal 341=43 C W N 953.
Y. D. 1939—c

51 Cal 680 Doublet I L R (1939)
1 Cal 162=43 C W N
120
52 Cal 123 Not Foll I L R 1939
Nag 300
107=29 C W N 181 (P C)
Ref 43 C W N 333, Rel
I L R 1939 Nag 644
319 Foll 18 Pat 121
717 Dist I L R (1939) 1
Cal 162=43 C W N 120
559 Ref 1939 1 M L J
724
636 Dist I L R (1939) 1
Cal 162=43 C W N 120
650=30 C W N 98 (P C)
Foll 43 C W N 432
53 Cal 51 Ref I L R (1939) 1
Cal 241
153=29 C W N 947 (F
B) Ref 43 C W N 453
166 Rel I L R (1939) 1
Cal 403=43 C W N 271;
43 C W N 602
445 Dist 14 Luck 438
561 Ref I L R 1939 Mad
54=(1939) 1 M L J 536.
664 Dist 1939 Rang L R
508, Dist. (1939) 2 M L J
671 Ref I L R 1939 All
97
746 Ref I L R (1939) 1
Cal 162=43 C W N 120.
758 Dist I L R (1939) 1
Cal 452; Ref 1939 Rang
L R 649
781 (F B) Ref I L R. 1939
Mad 456=(1939) 1 M L
J. 468, Not Foll I L R
1939 Lah 295
881 Cons 43 C W N. 488
922 Ref I L R. (1939) 2
Cal. 226=43 C W N 831.
54 Cal 52 Ref I L R (1939) 1
Cal 162=43 C W N 120
237 Overr. 66 I A 66=
(1939) 1 M L J 756=
1939 A L J. 298=41 Bom.
L R 428=43 C W N. 473;
Ref 18 Pat 234
303 Ref I L R 1939 Kar.
85
450 Ref I L R. 1939 Lah.
399
500 (P C) Foll I L R.
1939 Lah 319
505 Rel I L R 1939 Nag.
530, 540
630 Ref I L R 1939 Mad.
388=(1939) 1 M L J 31.
669 Ref I L R 1939 All
607
727 Appr. I L R 1939
Mad 708 (F B)=(1939)
2 M L J 135; I L R 1939
Mad 714=(1939) 2 M L
J 406=1939 A L J. 836
41 Bom L R. 1119=43
C W N 981 (P C)
813 Ref 66 I A 50=41
Bom L R. 672=(1939) 1
Cal. 283=43 C W N 281

(1939) 1 M L J. 544
(P C)
54 Cal 1052 Not Foll I L R
1939 Mad 252
55 Cal 164 Ref I L R 1939 Nag
229
121 Ref I L R (1939) 1
Cal 94
532 Foll I L R 1939 Lah
255
338 Foll I L R 1939 Nag
250, Ref 1939 Rang L R
280
708 Ref 1939 Rang L R
679
838 Ref I L R (1939) 1
Cal 162
903 Ref I L R 1939 Nag
624
1231=32 C W N 515 Foll
43 C W N. 1173
1277 Foll I L R 1939 Nag.
338...
1284 Reviewed 18 Pat 417
56 Cal 61=32 C W N. 971 Foll
43 C W N. 515.
135 Dist. I L R. 1939 Nag
121, Ref 1939 F C R 159
201 Foll I L R (1939) 2
Cal 285=43 C W N. 855
275 Foll. 18 Pat 571
290 (F B) Dist 18 Pat. 215,
Ref 41 Bom L R 98.
400=32 C W N 922 Foll
43 C W N. 1223
588 Ref 43 C W N 440
598 Dist 1939 Rang L R.
388
748 Dist. *Quid hoc* & Foll
18 Pat. 571
927 Foll I L R 1939 Nag
580
960 Ref 14 Luck 49
969=33 C W N. 392 Ref
43 C W N 352
1023 Foll I L R. 1939 Nag
393; Not Foll I L R 1939
Nag. 85
1041 Foll I L R. (1939) 1
Cal 318=43 C W N. 279
57 Cal. 25 Ref (1939) 2 M L J
296
67 Dist I L R (1939) 1
Cal 493=43 C W N. 453
122 Ref I L R 1939 Mad.
803
154=33 C W N 883 Ref
43 C W N. 969
226 Ref. I L R 1939 Nag
492
274 Not Foll. 41 Bom. L R.
943
289 Foll I L R 1939 Nag
624.
520 Ref. 41 Bom L R. 970
860 Ref I L R. 1939 All
103
1013 Rel I L R. (1939) 1
Cal. 477=43 C W N. 1173
1127 Dist. I L R. 1939 Nag
200; Ref. 43 C W N. 1173

- 57 Cal 1206 Foll I L R 1939
Nag 450
—1230 Foll I L R 1939 Nag
641
—1311 Dist I L R 1939
Nag 607
- 58 Cal 180 Ref (1939) 1 M L J
420
—346 Foll I L R (1939) 1
Cal 474
—598 Foll 18 Pat 155
—686 Ref 14 Luck 393
—752 Ref 41 Bom L R 219,
Rel I L R 1939 Kar 405
—829 Ref I L R 1939 All
167=1939 A L J 133
—832 Cons I L R (1939) 1
Cal 493=43 C W N 453
—1034 Ref I L R 1939
Bom 307
—1095 Ref I L R (1939) 1
Cal 187=43 C W N 133,
43 C W N 695
—1117 Ref I L R 1939 Kar
280
—1148 Ref I L R 1939 All
647
—1222=35 C W N 510 Ref
43 C W N 1126
—1235=35 C W N 550 Foll
43 C W N 34
- 59 Cal 1 (P C) Dist I L R 1939
Nag 398 Ref 18 Pat 370
—55 Ref I L R 1939 All
142
—68 Ref I L R 1939 Nag
338
—80 (P C) Foll I L R 1939
Nag 1, Dist & Foll 18
Pat 215
—199 Ref I L R (1939) 1
Cal 493=43 C W N 453,
Foll 18 Pat 670
—216 Ref I L R 1939 Mad
776=(1939) 1 M L J 664
—297 Foll 41 Bom L R 371
—329 Ref (1939) 2 M L J
551
—337=35 C W N 1294 Foll
43 C W N 515
—659 Diss I L R (1939) 2
Cal 261=43 C W N 867
—781 Ref 1939 Rang L R
639
—1128 Ref I L R 1939 All
258
—1131 Appr I L R (1939)
1 Cal 325=43 C W N
360
—1176 Foll I L R 1939 Nag
266
—1289 Foll I L R 1939 Mad
843=(1939) 1 M L
J 784
—1314 Rel 66 I A 50=
I L R (1939) 1 Cal 283=
43 C W N 281=41 Bom
L R 672=(1939) 1 M L
J 544 (P C)
—1361 Ref 43 C W N 695
- 60 Cal 1 Ref I L R 1939 All 103
I L R 1939 All 207, I L
R 1939 Mad 252
—191 Dist I L R (1939) 1
Cal 305=43 C W N 490
—233 Foll I L R 1939 Nag
393
—345 Ref I L R 1939 Lah
408
—427 Foll 41 Bom L R 980
—530 Rel I L R 1939 Kar
589
—581 Diss I L R 1939 Bom
389=41 Bom L R 328
—1003 Ref I L R 1939 Mad
870
—1181 Foll 1939 Rang L R
152
- 61 Cal 119 Dist I L R 1939
Bom 151=41 Bom L R
215
—262 Ref I L R 1939 All
217
—285 (P C) Ref I L R 1939
Mad 393
—390 Rel (1939) 1 M L J
649
—412 Ref 41 Bom L R 841
—475 (P C) Rel I L R 1939
Nag 200
—508 Foll I L R 1939 Nag
460
—525 Diss 1939 Rang L R
388
—841 Diss I L R (1939) 2
Cal 226 I L R 1939 Kar
422 Rel I L R 1939 Nag
246
—864 Rel I L R 1939 Nag
246
—890 Foll I L R 1939 Nag
371
—945=36 Bom L R 717 Ref
I L R 1939 Bom 9 173
- 62 Cal 213 Not Foll I L R 1939
Bom 104, (1939) 2 M L J
489
—229 Ref 1939 Rang L R
280
—238 Foll I L R (1939) 1
Cal 1
—275 Foll I L R (1939) 2
Cal 321
—294 Ref 1939 Rang L R
39
—393 Dist I L R 1939 Bom
154=41 Bom L R 215
—711 Diss I L R (1939) 2
Cal 68 Foll I L R (1939)
1 Cal 112
—733 Ref I L R 1939 Mad
820=(1939) 2 M L J 653,
43 C W N 4
—808 Ref 41 Bom L R 98
—886 Dist I L R 1939 Nag
632
- 63 Cal 155=40 C W N 115 Rel
43 C W N 772, Foll I L
R 1939 Nag 624
- 63 Cal 194 Dist I L R 1939
Kar 344
—435 Dist I L R (1939) 2
Cal 199
—526 Dist I L R (1939) 2
Cal 199
—538 Ref 1939 Rang L R
631
—1146 Foll 41 Bom L R
290
I L R (1937) Cal 391 Appr I L
R 1939 All 162
—201 Ref 66 I A 23=I L
R 1939 Mad 178 (P C)
I L R (1937) 2 Cal, 358 Dist
1939 Rang L R 631
—373 Foll I L R 1939 Nag
559
—434 Rel I L R 1939 Lah
23
—496 Rel I L R (1939) 2
Cal 163
—586 Affirmed 66 I A 184
—698 Ref I L R (1939) 2
Cal 226
I L R (1938) 1 Cal 256 Overr
I L R (1939) 2 Cal 93
—512 Ref 1939 Rang I R
649
I L R (1938) 2 Cal 155 Ref I L
R (1939) 1 Cal 437
—168 Ref I L R (1939) 1
Cal 437
I L R (1939) 1 Cal 112 Foll I L
R (1939) 2 Cal 68
- CALCUTTA WEEKLY NOTES**
- 1 C W N xciii (S N) Foll (1939)
2 M L J 36, I L R 1939
Mad 838
- 2 C W N 101 Appr (1939) 2 M L
J 284 (F B)
—229 Dist I L R (1939) 2
Cal 330
—689 Foll I L R 1939 All
505=1939 A L J 168
—702 Ref 1939 Rang L R
97
- 3 C W N 158 Reviewed 18 Pat
417
—635 Rel I L R (1939) 1
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 13 C.W.N. 513 Dist 43 C.W.N.
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 14 C.W.N. 306 Appr 1 I.L.R. 1939
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 — 759 Rel 14 Luck 65
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 — 165 Dist I.L.R. (1939) 1
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 — 605 (Per Peacherst, J.)
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 — 554 (Beachcroft J's obser-
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 — 889 Foll. I.L.R. 18 Pat,
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 — 260 Ref I.L.R. 1939 All
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 — 614 Foll. I.L.R. 1939 Mad
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 — 672 Cons I.L.R. 1939 Bom
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— 201 Ref 1939 A L J 178,
Dist I L R 1939 All 337
— 370 Ref I L R 1939 Nag
465
- 4 Mad 146 Foll (1939) 2 M L J
226
- 5 Mad 52 Foll (1939) 2 M L J
872

- 5 Mad 123 Rel (1939) 2 M.L.J. 85
— 236 Rel 1939 A.L.J. 832.
— 301 Foll I.L.R. 1939 Mad 833, Ref (1939) 1 M.L.J. 909
— 313 Ref (1939) 1 M.L.J. 124
— 307 (F.B.) Rel (1939) 1 M.L.J. 473
- 6 Mad 223 Ref 1939 Rang L.R. 294
- 7 Mad 39 Declared obsolete I.L.R. 1939 All 97
- 8 Mad 506 Not Foll (1939) 1 M.L.J. 802
— 506 Ref I.L.R. 1939 Mad 823 (F.B.)
- 9 Mad 64 (F.B.) Ref 41 Bom L.R. 750
— 110 Dist I.L.R. 1939 Kar 131
— 437 Foll (1939) 2 M.L.J. 353
- 10 Mad 205 (P.C.) Ref I.L.R. 1939 Nag 83
- 11 Mad 26 (P.C.) Ref I.L.R. 1939 Kar 121
— 106 Rel I.L.R. 1939 Nag 229
— 157 Ref (1939) 2 M.L.J. 697
— 317 Rel I.L.R. 1939 Nag 200
— 330 Ref I.L.R. 1939 Mad 324
— 406 Dist 41 Bom L.R. 561.
- 12 Mad 105 Ref (1939) 2 M.L.J. 604; 1939 Rang L.R. 50.
— 151 Ref I.L.R. 1939 Kar. 283
— 167 Appr. I.L.R. 1939 All 647
- 13 Mad 197 Ref I.L.R. 1939 Mad 622
— 209 Ref (1939) 2 M.L.J. 697
— 426 Ref 18 Pat 450
- 14 Mad. 26 Rel. (1939) 2 M.L.J. 400.
— 252 Expl. 41 Bom L.R. 371
— 441=1 M.L.J. 661 Ref (1939) 2 M.L.J. 604
- 15 Mad 300 Foll I.L.R. 1939 Mad 383
— 336 Ref. I.L.R. 1939 Nag 607
- 16 Mad 76 Ref 41 Bom L.R. 268=I.L.R. 1939 Bom 245
— 99 Ref I.L.R. 1939 Mad. 422
— 144 Ref I.L.R. 1939 Mad 324
— 143 Rel. I.L.R. 1939 Lah 261
— 280 Ref I.L.R. 1939 Nag 432
- 16 Mad 205 Ref (1939) 1 M.L.J. 583=I.L.R. 1939 Mad 560,
— 311 Foll I.L.R. 1939 Nag 1
— 317 Ref I.L.R. 1939 Mad 556= (1939) 1 M.L.J. 588
— 333=2 M.L.J. 479 Ref (1939) 1 M.L.J. 176=I.L.R. 1939 Mad 183
— 429 Rel I.L.R. (1939) 2 Cal 341, Ref 13 G.W.N. 953
— 454 Rel I.L.R. 1939 Bom 232, Foll 41 Bom L.R. 249
— 174=3 M.L.J. 124 Ref (1939) 1 M.L.J. 583=I.L.R. 1939 Mad 566
— 523 Ref (1939) 1 M.L.J. 770
- 17 Mad 160 Ref I.L.R. 1939 Mad 622, Foll (1939) 1 M.L.J. 831
— 184 Ref (1939) 2 M.L.J. 718
— 206 Ref 66 I.A. 50, Rel I.L.R. (1939) 1 Cal 283
— 41 Bom L.R. 672 (P.C.); 43 G.W.N. 281 (P.C.)
— 309 Declared obsolete I.L.R. 1939 All 97
— 410 (F.B.) Foll (1939) 2 M.L.J. 44
— 422 Rel I.L.R. 1939 Bom 314; Foll 41 Bom L.R. 333
— 498 Ref I.L.R. 1939 Lah 23
- 18 Mad 99 Ref I.L.R. 1939 All 647.
— 131 Ref (1939) 1 M.L.J. 825
— 143 Rel I.L.R. 1939 Kar 99
- 19 Mad 6 Foll (1939) 2 M.L.J. 294
— 249 (P.C.) Ref 1939 Rang L.R. 403
— 445 Ref (1939) 1 M.L.J. 340
- 20 Mad. 35=G.M.L.J. 235 Ref. (1939) 1 M.L.J. 582
— 58 Rel I.L.R. 1939 Nag 432
— 79 Rel I.L.R. 1939 Kar 241
— 81 Ref I.L.R. 1939 Kar 147
— 87 Ref 1939 Rang L.R. 108
— 289 Foll I.L.R. 1939 Nag 900
— 351 Ref 41 Bom L.R. 268=I.L.R. 1939 Bom 245
- 21 Mad 179 Foll (1939) 1 M.L.J. 9.
— 271 Foll I.L.R. 1939 Nag. 300.
- 21 Mad. 428 Ref (1939) 1 M.L.J. 729
— 492 Foll 41 Bom L.R. 530.
- 22 Mad. 139 Ref I.L.R. 1939 Mad 122= (1939) 1 M.L.J. 352
— 270 Ref 1939 F.C.R. 124
— 297 Ref (1939) 2 M.L.J. 718
— 305 *obiter dictum* of Subramania Aiyar, J. Disappr I.L.R. 1939 Mad 242, Subramania Aiyar, J.'s observations Not Foll. (1939) 1 M.L.J. 301.
— 503 (P.C.) Ref I.L.R. 1939 Nag 607
- 23 Mad 84 Disappr I.L.R. 1939 Mad 328
— 195 (F.B.) Rel I.L.R. 1939 Nag 548
— 227 (P.C.) Ref 1939 Rang L.R. 18
— 389 Ref I.L.R. 1939 All 617.
- 24 Mad. 449 Ref I.L.R. 1939 Bom 71.
— 650=11 M.L.J. 309 Ref (1939) 2 M.L.J. 731=1939 Rang. L.R. 548 (P.C.)
- 25 Mad 26 Foll 41 Bom L.R. 249; Ref I.L.R. 1939 Bom 232
— 61 (P.C.) Foll I.L.R. 1939 Kar. 64.
— 118 Dist I.L.R. 1939 All 237
— 183 Foll 41 Bom L.R. 353
— 220 Ref 1939 Rang.L.R. 493
— 599 Ref 43 C.W.N. 242.
— 678 (P.C.) Foll I.L.R. 1939 Nag. 465
- 26 Mad 230=12 M.L.J. 368 Foll (1939) 1 M.L.J. 152
— 264 Dist I.L.R. 1939 Nag 54
— 473 Appr. I.L.R. 1939 Mad 384; Foll (1939) 1 M.L.J. 350.
— 501 Rel. I.L.R. 1939 Nag 548
— 505 Ref 41 Bom L.R. 441.
— 662 Reviewed 18 Pat 13
— 681=13 M.L.J. 318 Ref. (1939) 2 M.L.J. 614.
— 730=13 M.L.J. 248 Rel. (1939) 2 M.L.J. 579.
— 740=13 M.L.J. 237 Ref (1939) 1 M.L.J. 468=I.L.R. 1939 Mad 456
— 742=12 M.L.J. 417 Ref. (1939) 1 M.L.J. 536=I.L.R. 1939 Mad 54
- 27 Mad 32 Foll. I.L.R. 1939 Nag. 293
— 131 Ref I.L.R. 1939 All. 607, 14 Luck. 49.
— 259 Ref 1939 F.C.R. 193.
— 300 (F.B.) Foll I.L.R. 1939 Nag 465.

- 3 Mad 123 Rel (1930) 2 M.L.J. 85
 — 245 Rel 1939 A.L.J. 832
 — 304 Foll I.L.R. 1939 Mad 833, Ref (1939) 1 M.L.J. 900
 — 313 Ref (1939) 1 M.L.J. 123
 — 397 (F.B.) Rel (1939) 1 M.L.J. 473
- 6 Mad 273 Ref 1939 Rang L.R. 294
- 7 Mad 39 Declared obsolete I.L.R. 1939 All 97
- 8 Mad 506 Not Foll (1939) 1 M.L.J. 202
 — 506 Ref I.L.R. 1939 Mad 613 (F.B.)
- 9 Mad 64 (F.B.) Ref 41 Bom L.R. 760
 — 110 Dist. I.L.R. 1939 Kar. 131
 — 137 Foll (1939) 2 M.L.J. 353
- 10 Mad 205 (P.C.) Ref I.L.R. 1939 Nag 83
- 11 Mad 26 (P.C.) Ref I.L.R. 1939 Kar 121
 — 109 Rel I.L.R. 1939 Nag. 229
 — 157 Ref (1939) 2 M.L.J. 697
 — 317 Rel I.L.R. 1939 Nag 200
 — 330 Ref I.L.R. 1939 Mad 324
 — 406 Dist. 41 Bom L.R. 561
- 12 Mad 105 Ref (1939) 2 M.L.J. 601; 1939 Rang L.R. 50.
 — 151 Ref I.L.R. 1939 Kar 203
 — 157 Appr I.L.R. 1939 All 617.
- 13 Mad 197 Ref I.L.R. 1939 Mad 622
 — 209 Ref (1939) 2 M.L.J. 697
 — 426 Ref 18 Pat 459
- 14 Mad 26 Rel (1939) 2 M.L.J. 400.
 — 252 Expl 41 Bom L.R. 371.
 — 441 = 1 M.L.J. 661; Ref (1939) 2 M.L.J. 604
- 15 Mad 300 Foll I.L.R. 1939 Mad 303
 — 336 Ref I.L.R. 1939 Nag 607.
- 16 Mad 76 Ref 41 Bom L.R. 268 = I.L.R. 1939 Bom 245
 — 99 Ref. I.L.R. 1939 Mad 422
 — 144 Ref I.L.R. 1939 Mad 324
 — 148 Rel I.L.R. 1939 Lah. 261
 — 280 Ref I.L.R. 1939 Nag 432.
- 16 Mad 265 Ref (1939) 1 M.L.J. 513 - I.L.R. 1939 Mad 514.
 — 111 Foll I.L.R. 1939 Nag 1
 — 317 Ref I.L.R. 1939 Mad 550, 1939 1 M.L.J. 503
 — 131 = 2 M.L.J. 279 Ref 113 = 1 M.L.J. 176, I.L.R. 1939 Mad 181
 — 129 Rel I.L.R. 1939 2 Cal 311, Ref 41 C.W.N. 953
 — 454 Rel I.L.R. 1939 Bom 232 Foll 41 Bom L.R. 219
 — 474 = 3 M.L.J. 123 Ref (1939) 1 M.L.J. 503 - I.L.R. 1939 Mad 566
 — 523 Ref (1939) 1 M.L.J. 770
- 17 Mad 165 Ref I.L.R. 1939 Mad 622; Foll (1939) 1 M.L.J. 831
 — 181 Ref (1939) 2 M.L.J. 718
 — 296 Ref 66 I.A. 50, Rel I.L.R. (1939) 1 Cal 283
 — 303 Ref (1939) 1 M.L.J. 511; 41 Bom L.R. 672 (P.C.); 13 C.W.N. 281 (P.C.)
 — 309 Declared obsolete I.L.R. 1939 All 97
 — 410 (F.B.) Foll (1939) 2 M.L.J. 41
 — 422 Rel I.L.R. 1939 Bom 314; Foll 41 Bom L.R. 333
 — 493 Ref I.L.R. 1939 Lah. 23
- 18 Mad 99 Ref I.L.R. 1939 All 617
 — 134 Ref (1939) 1 M.L.J. 825
 — 143 Rel I.L.R. 1939 Kar. 99
- 19 Mad 6 Foll (1939) 2 M.L.J. 294
 — 219 (P.C.) Ref 1939 Rang L.R. 403
 — 445 Ref. (1939) 1 M.L.J. 310
- 20 Mad. 35 = 6 M.L.J. 235 Ref. (1939) 1 M.L.J. 582.
 — 53 Rel I.L.R. 1939 Nag 432
 — 79 Rel I.L.R. 1939 Kar. 241.
 — 81 Ref. I.L.R. 1939 Kar. 117
 — 87 Ref. 1939 Rang L.R. 100
 — 209 Foll. I.L.R. 1939 Nag 900
 — 351 Ref 41 Bom L.R. 268 = I.L.R. 1939 Bom 245
- 21 Mad 179 Foll. (1939) 1 M.L.J. 9.
 — 271 Foll I.L.R. 1939 Nag. 309.
- 21 Mad 428 Ref (1939) 1 M.L.J. 729
 — 192 Foll 41 Bom L.R. 530
- 22 Mad 139 Ref I.L.R. 1939 Mad 122 1911 1 M.L.J. 352
 — 270 Ref 1939 1 C.R. 124
 — 297 Ref (1939) 2 M.L.J. 710
 — 304 (F.B.) Ref of Subramanyam Aiyar J. Disappr I.L.R. 1939 Mad 212, Subramanyam Aiyar J's observation Not Foll (1939) 1 M.L.J. 301
 — 503 (P.C.) Ref I.L.R. 1939 Nag 607
- 23 Mad 84 Disappr I.L.R. 1939 Mad 328
 — 195 (F.B.) Ref I.L.R. 1939 Nag 518
 — 227 (P.C.) Ref 1939 Rang L.R. 18
 — 309 Ref I.L.R. 1939 All 617.
- 24 Mad 449 Ref I.L.R. 1939 Bom. 71.
 — 650 = 11 M.L.J. 309 Ref (1939) 2 M.L.J. 731 = 1939 Rang L.R. 548 (P.C.)
- 25 Mad 26 Foll 41 Bom L.R. 219, Ref I.L.R. 1939 Bom. 232
 — 61 (P.C.) Foll I.L.R. 1939 Kar. 61.
 — 118 Dist. I.L.R. 1939 All. 237
 — 183 Foll 41 Bom L.R. 353.
 — 220 Ref 1939 Rang L.R. 403
 — 309 Ref 13 C.W.N. 212.
 — 678 (P.C.) Foll I.L.R. 1939 Nag 465
- 26 Mad 230 = 12 M.L.J. 368 Foll. (1939) 1 M.L.J. 152
 — 261 Dist I.L.R. 1939 Nag 54
 — 473 Appr. I.L.R. 1939 Mad 381; Foll (1939) 1 M.L.J. 350
 — 501 Rel. I.L.R. 1939 Nag 548
 — 505 Ref 41 Bom L.R. 441.
 — 562 Reviewed 18 Pat. 19
 — 681 = 13 M.L.J. 318 Ref. (1939) 2 M.L.J. 614.
 — 730 = 13 M.L.J. 248 Rel (1939) 2 M.L.J. 579.
 — 740 = 13 M.L.J. 237 Ref. (1939) 1 M.L.J. 468 = I.L.R. 1939 Mad 456
 — 742 = 12 M.L.J. 417 Ref (1939) 1 M.L.J. 536 = I.L.R. 1939 Mad 54
- 27 Mad 32 Foll. I.L.R. 1939 Nag. 293
 — 131 Ref I.L.R. 1939 All. 607; 14 Luck 49.
 — 259 Ref 1939 P.C. 300 (F.B.) Foll 1939 Nag 465.

- 27 Mad 326 Ref 11 R 1939
 — Mad 422
 — 401 Ref 11 R 1939 Mad
 794
 — 483 (F B) Ref (1939) 2
 M L J 604
 — 525 Doubled 41 Bom L R
 277, Ref 11 R 1939 Bom
 160
 — 591 14 M L J 297 Appr
 (1939) 2 M L J 674
 28 Mad 19 Ref 41 Bom L R 959
 — 72=15 M L J 32 Appl
 (1939) 2 M L J 114, Ref
 I L R 1939 Mad 483=
 (1939) 1 M L J 176
 — 87=14 M L J 474 Ref
 I L R 1939 Mad 456=
 (1939) 1 M L J 468
 — 161 Not Foll I L R 1939
 Lah 424
 — 351 Cons. (1939) 1 M L J
 742
 29 Mad 126 Ref 1939 F C R 159
 — 190 Ref 14 Luck 360
 — 200 (F B) Ref I L R 1939
 Mad 42=
 — 367 Ref 1939 Rang L R
 474
 — 511 Foll I L R 1939 Nag
 580
 — 539 Ref I L R 1939 Mad
 566
 30 Mad 12 Ref I L R 1939 Mad
 803 (F B)
 — 15=16 M L J 471 Appl
 (1939) 1 M L J 199
 — 88=16 M L J 508 (F B)
 Ref (1939) 2 M L J 501,
 (1939) 2 M L J 658, Ref
 I L R 1939 Kar 405 Foll
 (1939) 2 M L J 812
 — 274=17 M L J 225 Ref
 (1939) 2 M L J 611
 — 410 Ref 66 I A 80, Rel
 I L R (1939) 1 Cal 283=
 43 G W N 281 (P C) 41
 Bom L R 672 (1939) 1
 M L J 544
 — 413=17 M L J 334 Ref
 I L R 1939 Mad 374,
 Disc. (1939) 1 M L J 163
 31 Mad 24=17 M L J 441 Ref
 (1939) 1 M L J 695
 — 45 Foll 1939 Rang L R
 622
 — 234 Ref I L R 1939 Nag
 367
 — 330 Ref I L R 1939 Nag
 276
 — 338=18 M L J 254 Appr
 (1939) 1 M L J 456
 — 419 Ref 1939 A L J 53=
 I L R 1939 All 150
 — 531 Ref (1939) 2 M L J
 645
 — 543 Ref 1939 F C R 159
 32 Mad 96 (F B) Foll 41 Bom
 L R 6

- 32 Mad 141=19 M L J 131
 Ref (1939) 1 M L J 176,
 I L R 1939 Mad 483
 — 170 Ref I L R 1939 All
 424
 — 185 Ref 11 R 1939 Nag
 1
 — 220 Ref I L R 1939 Kar
 370
 — 371=19 M L J 333 (I B)
 Ref (1939) 1 M L J 580,
 I L R 1939 Mad 566
 — 410=19 M L J 584 (F B)
 Foll (1939) 2 M L J 664
 33 Mad 31 Diss I L R 1939 Mad
 121
 — 93 Dist 11 R 1939 Mad
 820, Cons. (1939) 2 M L J
 653
 — 118 Appl 1 L R 1939 All
 322
 — 308 Rel 1939 A L J 697,
 Ref 1939 Rang L R 358,
 Appr 43 G W N 641=
 41 Bom L R 742 (P C)
 — 342=20 M L J 49 Ref
 (1939) 1 M L J 520
 — 373 Ref I L R (1939) 2
 Cal 1
 — 502 Ref 41 Bom L R 98
 34 Mad 47 Dist I L R 1939 Kar
 409
 — 51 Rel 14 Luck 308
 — 53 Ref (1939) 1 M L J
 582
 — 119=20 M L J 380 Ref
 (1939) 2 M L J 16
 — 138 Foll 18 Pat 215
 — 188 Foll I L R 1939 Nag
 347
 — 11 Ref I L R 1939 Nag
 465
 — 543 Ref I L R 1939 Nag
 636
 — 545 Ref 18 Pat 544
 35 Mad 1 Ref 1939 F C R 159,
 Dist I L R 1939 Nag 124,
 I L R 1939 All 19
 — 147=21 M L J 493 Overr
 (1939) 2 M L J 340 (F B),
 Rel I L R 1939 Lah 336
 — 728=21 M L J 600 Appr
 (1939) 2 M L J 884 (F B)
 36 Mad 39 Ref 41 Bom L R 675
 — 62=21 M L J 1022 Appr
 (1939) 2 M L J 624
 — 116 Reviewed 18 Pat 590
 — 120=21 M L J 878 Ref
 (1939) 2 M L J 604
 — 216 Rel I L R (1939) 1
 Cal 574, Diss 1939 Rang
 L R 479
 — 295 Ref 1939 A L J 624,
 18 Pat 271
 — 308 Dist I L R 1939 Lah
 373
 — 375 Ref 11 R 1939 All
 424
 37 Mad 49 Foll (1939) 1 M L J
 152
 — 119 Diss I L R 1939 Kar
 75, Ref 18 Pat 514

- 37 Mad 181 Dist 1 L R 1939
 All 424
 — 273 (F B) Ref 43 G W N
 295
 37 Mad 293 Rel I L R 1939
 Bom 97, Reviewed 18 Pat
 590
 — 393 Ref I L R 1939 Nag 1
 — 458 Ref 41 Bom L R 589
 38 Mad 45 Reviewed 18 Pat 590
 — 71=23 M L J 599 Ref
 (1939) 1 M L J 745
 — 92 Ref I L R 1939 All
 647
 — 101 Reviewed 18 Pat 355
 — 141 Ref I L R 1939 All
 67
 — 153=28 M L J 260 Ref
 I L R 1939 Mad 622;
 Appl (1939) 1 M L J 831
 — 203=25 M L J 228 Appr
 (1939) 1 M L J 154, Ref
 1939 Rang L R 601
 — 260 Ref 41 Bom L R 585
 — 297=25 M L J 356 (F B)
 Ref (1939) 1 M L J 582
 — 406 Ref I L R 1939 Nag
 383
 — 466 Rel 1939 A L J 478,
 Foll I L R 1939 All 573
 — 489 Ref 1939 Rang L R
 294
 — 535 Rel 14 Luck 543
 — 581 Ref I L R 1939 Kar
 121
 — 883 Ref I L R 1939 Nag
 432
 — 887 Foll 18 Pat 654
 — 922 (F B) Foll I L R 1939
 Nag 373 Ref 14 Luck 176
 — 1064 Diss I L R 1939
 Mad 121
 — 1071=26 M L J 612 Dist
 I L R 1939 Mad 203
 Doubled (1939) 2 M L J
 195
 39 Mad 1 Ref I L R 1939 Nag
 498
 — 24 Ref 41 Bom L R 818
 — 80 Rel I L R 1939 Nag
 429
 — 219=28 M L J 600 (F B)
 Ref (1939) 1 M L J 776
 — 304 Ref 14 Luck 351
 — 341=27 M L J 718 Ref
 (1939) 2 M L J 778
 — 351 Foll I L R 1939 Mad
 843, Ref (1939) 1 M L J
 781
 — 501=28 M L J 598 Ref
 (1939) 2 M L J 284
 — 570 Rel I L R 1939 Nag
 548
 — 579 Ref (1939) 1 M L J
 324
 — 617 (P C) Rel I L R 1939
 Kar 111
 — 634 Rel I L R 1939 Nag
 383
 — 645 (F B) Reviewed 18
 Pat 355
 — 772=29 M L J 18 Cons
 (1939) 2 M L J 805

39 Mad 843 Ref 43 C.W.N. 239
 — 653 Toll 18 Pat 271
 — 930 Not Foll' I.L.R. 1939
 Nag 465
 — 1031 Rel 14 Luck 213
 — 1164 (F.B.) Ref 41 Bom
 L.R. 524
 40 Mad 31=32 M.L.J. 422 (F.B.)
 Dist (1939) 1 M.L.J. 352
 Ref I.L.R. 1939 Mad 422
 — 93=30 M.L.J. 237 R.I.
 (1939) 2 M.L.J. 579
 — 108 Ref 1939 Rang L.R.
 570
 — 204=31 M.L.J. 600 (F.B.)
 Rel (1939) 1 M.L.J. 337
 — 243 (F.B.) Ref I.L.R.
 1939 Bom 232 Foll 41
 Bom L.R. 249
 — 402 (P.C.) Ref I.L.R. 1939
 Kar 18
 — 556 Ref 41 Bom L.R. 970
 — 603=32 M.L.J. 295 (F.B.)
 Ref (1939) 2 M.L.J. 680
 — 654=30 M.L.J. 514 Appr
 (1939) 1 M.L.J. 227
 — 663 Toll 41 Bom L.R. 455;
 Dist I.L.R. 1939 All 200
 — 759 Ref 41 Bom L.R. 470;
 (1939) 1 M.L.J. 337
 — 836 (P.C.) Ref I.L.R. 1939
 Mad 483
 — 968 (F.B.) Foll 18 Pat 141
 — 1111=32 M.L.J. 442 Ref
 (1939) 1 M.L.J. 541; Ref
 66 I.A. 50=41 Bom L.R.
 672 (P.C.)=43 C.W.N. 281
 (P.C.) Rel I.L.R. (1939) 1
 Cal 283
 41 Mad 44 (F.B.) Ref I.L.R.
 1939 Mad 622
 — 75 (F.B.) Foll I.L.R. 1939
 Nag 88
 — 169 Not Appr I.L.R. 1939
 All 647, Diss 1939 A.L.J.
 522
 — 197 Ref I.L.R. 1939 Nag
 1
 — 233 Ref 41 Bom L.R. 994
 — 241 Ref 41 Bom L.R. 625
 — 403 (P.C.) Dist. I.L.R.
 1939 Lah. 295
 — 454=34 M.L.J. 271 Ref
 (1939) 2 M.L.J. 585
 — 513 Not reconcilable with
 46 L.W. 332. Ref (1939)
 2 M.L.J. 72; I.L.R. 1939
 Mad 600
 — 616 Foll 18 Pat 404
 — 624 Ref 14 Luck 442,
 Doubted I.L.R. (1939) 1
 Cal 81
 — 691 Foll 41 Bom L.R. 257
 — 743=31 M.L.J. 590 (F.B.)
 Ref. (1939) 1 M.L.J. 154
 — 778 Ref I.L.R. 1939 Nag
 83
 — 792 Appr. 1939 F.C.R. 159
 — 824=35 M.L.J. 473 Ref.
 (1939) 1 M.L.J. 751
 — 943 Ref I.L.R. 1939 Nag
 124.

41 Mad 1033 Ref 41 Bom L.R.
 875
 42 Mad 183 (F.B.) Ref I.L.R.
 1939 Mad 776, I.L.R. 1939
 Mad 223; (1939) 1 M.L.J.
 702
 — 203 Ref I.L.R. 1939 Nag
 636
 — 547 F.B. Dist 18 Pat
 485
 — 565 Ref 1939 Rang L.R.
 501
 — 637 Ref I.L.R. 1939 Bom
 173
 — 711 (F.B.) Ref I.L.R. 1939
 Mad 422. Disc I.L.R.
 1939 Mad 7
 — 813 (P.C.) Ref 1939 Rang
 L.R. 372
 — 821 Ref I.L.R. (1939) 1
 Cal 493
 43 Mad 32 Reviewed 18 Pat 590
 — 107=38 M.L.J. 32 (F.B.)
 Ref (1939) 1 M.L.J. 468,
 I.L.R. 1939 Mad 456;
 Not Foll' I.L.R. 1939 Lah.
 295.
 — 135 Toll 18 Pat 670
 — 185 Ref I.L.R. 1939 Bom
 173; I.L.R. 1939 Bom 173,
 Rel I.L.R. 1939 Nag 312
 — 280 Ref & Disc 1939 A.L.
 J. 85
 — 288 Ref I.L.R. 1939 Mad.
 507=(1939) 1 M.L.J. 499
 — 381 Foll 41 Bom L.R. 384;
 Ref I.L.R. 1939 Bom
 302.
 — 503 Ref 14 Luck 459
 — 541 (P.C.) Rel 1939 A.L.
 J. 358
 — 640 Foll 1939 Rang L.R.
 686
 — 712 Ref I.L.R. 1939 Nag.
 636
 — 760 (F.B.) Rel I.L.R. 1939
 Kar. 269; Foll 41 Bom L.R.
 R. 1101
 — 800 Ref 41 Bom L.R. 815
 44 Mad 35 Diss 43 C.W.N. 539;
 I.L.R. (1939) 1 Cal. 530
 — 189 Ref. I.L.R. 1939 Mad
 776
 — 232 Foll 18 Pat. 155
 — 718 Ref I.L.R. 1939 Bom
 320=41 Bom L.R. 297
 — 883 (P.C.) Rel. I.L.R. 1939
 Kar 111
 — 937=40 M.L.J. 38 Rel
 (1939) 1 M.L.J. 646
 45 Mad 14=41 M.L.J. 441 Overr
 (1939) 2 M.L.J. 135 (F.B.)
 =I.L.R. 1939 Mad 708
 — 90 Ref 43 C.W.N. 999=
 I.L.R. (1939) 2 Cal 291
 — 103 Dist 41 Bom L.R. 473.
 — 113=41 M.L.J. 608 (F.B.)
 Ref (1939) 1 M.L.J. 517.
 — 191 Rel. I.L.R. 1939 Nag
 229.
 — 308 Ref 1939 Rang L.R.
 548 (P.C.)

45 Mad 320 (P.C.) Expt & Rel
 I.L.R. 1939 Kar 152
 — 370 Rel. I.L.R. 1939 Lah.
 399
 — 425 Diss. 41 Bom L.R. 59;
 I.L.R. 1939 Bom 340
 — 466 Not Foll' I.L.R. 1939
 Nag 367
 — 475 (P.C.) Rel I.L.R. 1939
 Mad 838
 — 633 Not Foll' I.L.R. 1939
 Nag 580
 — 785 Diss 1939 A.L.J. 522;
 Ref I.L.R. 1939 Mad 611;
 Disappr I.L.R. 1939 All
 617
 — 819 Disc & Com I.L.R.
 (1939) 1 Cal 56
 — 922=43 M.L.J. 396 (F.B.)
 Overr I.L.R. 1939 Mad
 708=(1939) 2 M.L.J. 135
 (F.B.)
 — 949 Ref I.L.R. (1939) 1
 Cal 592=43 C.W.N. 745
 46 Mad 135 Rel I.L.R. 1939
 Nag 544
 — 382=44 M.L.J. 450 Ref
 I.L.R. 1939 Mad. 708=
 Nag 544
 — 135 Diss 18 Pat 429; Not
 Foll' I.L.R. 1939 Nag 64
 — 525 Foll 41 Bom L.R. 497;
 Ref I.L.R. 1939 Bom 173
 — 583 Ref 43 C.W.N. 250
 — 706 Foll 41 Bom L.R. 157
 (P.C.); Ref I.L.R. 1939
 Mad 178 (P.C.)=66 I.A.
 23=43 C.W.N. 225
 — 751=25 Bom L.R. 1275
 (P.C.) Ref 41 Bom L.R.
 497 Rel 41 Bom L.R. 497.
 — 844 Foll 41 Bom L.R. 170
 — 918 Ref 1939 Rang L.R.
 194
 — 955=45 M.L.J. 309 Foll
 (1939) 1 M.L.J. 120
 47 Mad 139 Foll (1939) 2 M.L.
 J. 475
 — 150 Ref I.L.R. 1939 Mad
 367; Dist (1939) 1 M.L.J.
 268
 — 160=45 M.L.J. 690 Not
 Foll (1939) 1 M.L.J. 802;
 Ref I.L.R. 1939 Mad 803
 (F.B.)
 — 190 Ref. I.L.R. 1939 All
 185
 — 245 Foll I.L.R. 1939 Nag
 79
 — 288=46 M.L.J. 104 (F.B.)
 Dist (1939) 1 M.L.J. 93
 — 308=46 M.L.J. 189 Rel
 (1939) 2 M.L.J. 460
 — 312 Ref 1939 Rang L.R.
 108
 — 369 (F.B.) Ref I.L.R. 1939
 Kar 121.
 — 428=46 M.L.J. 456
 (1939) 2 M.L.J. 135
 =I.L.R. 1939 Mad

- 47 Mad 729 (P C) Rel I L R.
1939 Nag 1
- 48 Mad 254 (P C) Ref I L R
1939 Mad 853
465 Foll 41 Bom L R 195
Appr I L R 1939 Bom
256
- 553=48 M L J 419 Ref
(1939) 1 M L J 379 Foll
18 Pat 318
- 559=48 M L J 134 Foll
(1939) 2 M L J 521
- 883 (P C) Expl I L R
1939 Nag 624
- 939 Not Foll I L R 1939
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- 944=49 M L J 684 Dist
(1939) 2 M L J 423
- 49 Mad 156 Ref I L R 1939
Nag 175
- 211=50 M L J 208 Not
to be deemed overruled by
59 I A 300, (1939) 1 M L
J 493
- 215 Rel I L R (1939) 1
Cal 574
- 525=50 M L J 210 (F B)
Foll (1939) 2 M L J 39
- 609=50 M L J 468 (F B)
Ref (1939) 1 M L J 324
- 768=50 M L J 689 Overr
(1939) 2 M L J 884 (F B)
- 820 (F B) Rel I L R 1939
Kar 307, Ref 41 Bom L R
168, I L R 1939 Nag 580,
Dist I L R 1939 Nag 580
- 833 (F B) Rel I L R 1939
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- 849 (F B) Rel I L R 1939
Mad 585
- 900=51 M L J 311 Diss
(1939) 1 M L J 509
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- 50 Mad 49 Ref I L R 1939 Nag
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- 193 (P C) Foll I L R
1939 Nag 266
- 201=52 M L J 38 Rel
(1939) 1 M L J 334
- 228 Appr 41 Bom L R
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- 259 Ref 18 Pat 544
- 403 Ref I L R 1939 Nag
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- 417 Appr I L R 1939 All
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- 449 Rel 43 C W N 445,
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41 Bom L R 297,
I L R (1939) 1 Cal 257
- 474 D 41 Bom L R 284
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- 582 Ref 41 Bom L R 223
- 626=52 M L J 532 R-f
(1939) 1 M L J 770
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- 663 Rel I L R 1939 Kar
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- 677 Ref 43 C W N 374
- 50 Mad 740 Foll I L R 1939
Nag 457
- 754 Rel 1939 F C R 159
Cons 1939 Rang L R 72
- 866 Foll 41 Bom L R 195,
Appr I L R 1939 Bom
256
- 877=53 M L J 864 Dist
(1939) 2 M L J 836
- 51 Mad 68=54 M L J 140 Rel
(1939) 1 M L J 9
- 76=53 M L J 668 Rel
(1939) 2 M L J 120
- 228=54 M L J 564 Rel
(1939) 1 M L J 70=I L
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- 266=54 M L J 361 (F B)
Doubted (1939) 2 M L J
440
- 333 Dist 14 Luck 322
- 342 Ref I L R 1939 Mad
853, Foll I L R 1939
Mad 535 Rel (1939) 1
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- 347 Rel 14 Luck 453
- 361 (F B) Rel I L R 1939
Kar 300
- 349=30 Bom L R 1353
(P C) R-f 41 Bom L R
1104
- 417=55 M L J 175 (F B)
Ref (1939) 1 M L J 158
- 594 Ref 14 Luck 164
- 597 Ref (1939) 1 M L J
64
- 655 Foll 41 Bom I R 328
=I L R 1939 Bom 389
- 664 55 M L J 345 Dist
(1939) 1 M L J 317
- 681 Foll 41 Bom L R 33
- 711=55 M L J 471 Ref
(1939) 1 M L J 751, Foll
(1939) 1 M L J 237
- 763 Rel 14 Luck 213
- 800 (F B) Diss 1939
Rang L R 280, I L R
1939 Nag 250
- 839 Rel 14 Luck 40
- 858 Rel I L R 1939 Kar
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- 967=55 M L J 351 (F B),
Foll 18 Pat 450
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- 52 Mad 39 Foll 41 Bom L R
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- 123=55 M L J 791 (F B)
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Cons (1939) 2 M L J
762 (P C), Ref 1939 A L
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- 160=55 M L J 478 Ref
(1939) 1 M L J 520
- 175 (P C) Ref I L R 1939
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- 207 Ref I L R 1939 Mad
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- 227=56 M L J 380 Ref
(1939) 1 M L J 751
- 52 Mad 347 Cons 1939 Rang L
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- 398 Ref I L R. 1939 Bom
245
- 432 Foll 1939 Rang L R
479
- 590 Ref I L R 1939 Bom
27
- 602 Foll I L R 1939 Nag
419, Ref 1939 F C R 159,
Cons 1939 Rang L R 72
- 695 Cons 1939 Rang L R
72
- 717 (F B) Foll I L R.
1939 Nag 484
- 899=57 M L J 381 Ref.
(1939) 1 M L J 724
- 952=57 M L J 398 Rel
(1939) 2 M L J 414.
- 53 Mad 80=57 M L J 743 Rel
(1939) 1 M L J 617
- 84 Ref I L R. 1939 Bom
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- 151=57 M L J 726 Dist
(1939) 2 M L J 268, Ref
(1939) 2 M L J 579
- 262 (F B) Dist 43 C W N
836=1939 2 Cal 264
- 270 (F B) Preferred I L R
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- 288 (F B) Foll I L R
1939 Nag 478
- 540=58 M L J 407 Appl
(1939) 2 M L J 356
- 551 Ref I L R 1939 Mad
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- 979=60 M L J 25 Foll
(1939) 2 M L J 801
- 54 Mad 132 Foll 41 Bom L R
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- 153 Foll 41 Bom L R 215,
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- 184=60 M L J 721 Cons
(1939) 1 M L J 473.
- 374 Rel I L R 1939 Kar
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- 469 Rel I L R 1939 Lah
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- 543=61 M L J 139 Rel
(1939) 2 M L J 208
- 564=61 M L J 111 Ref
I L R 1939 Mad 496
- Appl (1939) 1 M L J 730
- 568 Diss I L R 1939 Kar
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- 793=61 M L J 569 Ref
I L R 1939 Mad 483=
(1939) 1 M L J 176
- 928 Ref (1939) 2 M L J
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- 55 Mad 17=61 M L J 348
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- 6 Comm I L R (1939) 1
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52
- 7=60 M L J 527 Ref
(1939) 2 M L J 620
- 84=68 M L J 66 D
(1939) 2 M L J 475
- 55 Mad 224 Ref 1939 Rang L
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55 Mad 316 Ref I.L.R. 1939
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312 Foll I.L.R. 1939 Nag
313 Foll I.L.R. 1939 Nag
314
315 = 62 M.L.J. 541 Ref
(1939) 2 M.L.J. 527
316 Foll I.L.R. 1939 Nag
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317 = 62 M.L.J. 433 Foll
(1939) 2 M.L.J. 310 (F.B.)
318 Rel I.L.R. 1939
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319 Not Foll I.L.R. 1939
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320 = 62 M.L.J. 742 Ref
66 LA 66, 18 Pat 234,
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(P.C.), Appr 41 Bom L.R.
423 (P.C.); Rel 1939 A.L.
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1 M.L.J. 756, (1939)
2 M.L.J. 155
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1006 Foll I.L.R. 1939 Nag
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1025 = 63 M.L.J. 383 Diss.
(1939) 2 M.L.J. 509
56 Mad 161 Rel 1939 A.L.J. 892
169 Ref I.L.R. 1939 Bom.
71
212 = 63 M.L.J. 764 Ref
14 Luck 176 Overr. I.L.
R. 1939 Mad 764 = (1939)
1 M.L.J. 702 (F.B.)
Rel (1939) 2 M.L.J. 400.
320 Diss 1939 Rang L.R.
503
313 Foll 41 Bom L.R. 420
405 Rel. I.L.R. 1939 Mad
803 (F.B.)
458 Ref I.L.R. 1939 Mad
828,
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1939 All 207 Rel. 1939
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J. 29, I.L.R. 1939 Bom
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(1939) 1 M.L.J. 770
316 = 64 M.L.J. 682 Ref
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(1939) 1 M.L.J. 730.
319 = 65 M.L.J. 423 Ref
(1939) 1 M.L.J. 536.
622 Ref I.L.R. 1939 All
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712 = 65 M.L.J. 364 Ref
(1939) 1 M.L.J. 695.
749 = 65 M.L.J. 186 Appl.
(1939) 2 M.L.J. 6.
808 Ref I.L.R. 1939 Nag
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915 (F.B.) Diss 1939
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56 Mad 951 Foll 41 Bom L.R.
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57 Mad 36 - 65 M.L.J. 569 Appl
(1939) 1 M.L.J. 466
95 (F.B.) Appr. I.L.R.
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177 = 65 M.L.J. 871 (F.B.)
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439 Ref (1939) 1 M.L.J.
480; I.L.R. 1939 Nag 338.
195 = 65 M.L.J. 819 Doubt-
ed & Dist (1939) 2 M.L.
J. 72, Dist I.L.R. 1939
Mal 600
230 = 65 M.L.J. 410 Overr
(1939) 2 M.L.J. 310 (F.B.)
330 Diss I.L.R. 1939 Mad
313, Not Foll (1939) 1
M.L.J. 205
719 Ref 41 Bom L.R.
1007
931 Foll I.L.R. 1939 Nag
396.
1083 Ref & Expl. I.L.R.
1939 Kar 105
58 Mad 65 Ref I.L.R. 1939
Nag 1.
116 Ref & Expl I.L.R.
1939 Mad. 95
220 Diss 1939 Rang L.R.
388
233 = 67 M.L.J. 303 Rel
(1939) 2 M.L.J. 80
270 Ref I.L.R. 1939 All
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767 = 68 M.L.J. 227 = 8
I.T.C. 74 Overr. I.L.R.
1939 Mad. 358 = (1939) 2
M.L.J. 68 (F.B.)
418 Ref. I.L.R. 1939 Nag
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693 = 68 M.L.J. 81 (F.B.)
Ref (1939) 2 M.L.J. 658;
I.L.R. 1939 Nag 601
735 (F.B.) = 68 M.L.J. 54
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(1939) 1 M.L.J. 792
746 Ref 43 C.W.N. 1173
760 = 68 M.L.J. 200 Ref
(1939) 1 M.L.J. 695
794 = 68 M.L.J. 883 (F.B.)
Ref I.L.R. 1939 Mad. 24.
Dist. (1939) 2 M.L.J. 308;
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817 = 68 M.L.J. 123 Cons.
(1939) 2 M.L.J. 611
841 Ref 1939 Rang L.R.
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862 = 68 M.L.J. 722 Rel
(1939) 2 M.L.J. 395
994 = 69 M.L.J. 451 Cons.
(1939) 1 M.L.J. 473
1056 = 68 M.L.J. 681 Rel
(1939) 2 M.L.J. 708
59 Mad 1 Ref I.L.R. 1939 Mad.
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59 Mad 461 = 70 M.L.J. 162
(F.B.) Foll (1939) 1 M.
L.J. 429
75 Diss 43 C.W.N. 57 =
I.L.R. (1939) 1 Cal 319
107 Dist (1939) 2 M.L.J.
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165 = 69 M.L.J. 812 Rel
(1939) 1 M.L.J. 412;
(1939) 1 M.L.J. 614
240 = 69 M.L.J. 458 Appr
I.L.R. 1939 Mad 764
(F.B.) = (1939) 1 M.L.J.
702
296 Ref I.L.R. 1939 Mad.
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359 = 70 M.L.J. 1 (F.B.)
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Foll. (1939) 2 M.L.J. 16;
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339 (P.C.) Appl I.L.R.
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362 (F.B.) Ref I.L.R. 1939
Mad 70
693 = 70 M.L.J. 1 Rel
(1939) 1 M.L.J. 487.
825 = 71 M.L.J. 11 (F.B.)
Ref I.L.R. 1939 Mad 54
= (1939) 1 M.L.J. 536
855 = 71 M.L.J. 790 Diss
I.L.R. 1939 Kar. 359;
Expl & Dist (1939) 1 M.
L.J. 620
928 = 71 M.L.J. 170 Foll
(1939) 1 M.L.J. 705
I.L.R. 1937 Mad. 495 = 71 M.L.J.
759 Diss (1939) 1 M.L.J.
695
498 = (1937) 1 M.L.J. 91
(F.B.) Ref (1939) 2 M.L.J.
579
784 Ref 14 Luck 442
990 Ref (1939) 1 M.L.J.
308
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M.L.J. 639
I.L.R. 1938 Mad 25, Reversed
66 LA 23 = I.L.R. 1939
Mad 178 (P.C.)
28 Ref 66 LA 23
31 Ref 66 LA 23
39 Ref I.L.R. 1939 Mad
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586 (F.B.) Ref I.L.R. 1939
Mad 121
326 Rel (1939) 2 M.L.J.
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381 = (1938) 1 M.L.J. 256
(F.B.) Ref. (1939) 2 M.L.J.
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Mad 532 (P.C.)
563 = (1938) 1 M.L.J. 378
(F.B.) Ref (1939) 2 M.L.J.
531.
606 = (1937) 1 M.L.J. 216.
Foll (1939) 2 M.L.J. 757.
767 Foll 18 Pat 370
819 Ref 43 C.W.N. 967
858 Ref I.L.R. 193
54 = (1937) 1 M

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(1939) 2 ML J 606
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519 1939 Rang I R 668
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1060 (1938) 1 ML J 471
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216=(1938) 2 ML J 1068
Foll (1939) 2 MI J 745
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685=(1939) 1 ML J 889
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8 ML J 266 Ref ILR 1939
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9 MI J 355 Ref (1939) 2 MI J
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11 MI J 122 Ref (1939) 2 MI
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311 Coll ILR 1939 Mad
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16 MI J 418 Ref ILR 1939
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20 MI J 732 Ref ILR 1939
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21 ML J 82 Ref ILR 1939
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27 ML J 85 Ref ILR 1939
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23 MI J 289 Foll (1939) 2
ML J 294
939 Treated as overruled
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26 ML J 210 Dist (1939) 2 ML
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27 MI J 302 Over ILR 1939
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28 ML J 147 Ref ILR 1939
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29 ML J 144 Ref (1939) 2 ML
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30 ML J 619 Ref (1939) 1 ML
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- 31 ML J 758 Ref (1939) 1 MI
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32 ML J 47 Ref (1939) 2 MI J
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33 MI J 316 Not Coll ILR
1939 Mad 803=(1939) 1
ML J 802 (I B)
355 Foll (1939) 1 ML J
440
131 Ref ILR 1939 Mad
776=(1939) 1 ML J 664
34 ML J 206 Ref (1939) 1 ML
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439 Ref (1939) 1 MI J
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35 ML J 23 Ref ILR 1939
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153 Dist (1939) 1 ML J
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304 Ref (1939) 1 ML J
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37 MI J 159 Ref 43 CWN 699
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3 MI J 492 Ref (1939) 1 ML J
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42 ML J 361 Ref ILR 1939
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45 ML J 363 Ref 1939 Rang L
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225 Duc ILR 1939
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47 ML J 475 Ref (1939) 2 ML
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48 ML J 221 Ref 41 Bom L R
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514 Not Foll (1939) 1
ML J 317
571 Dist (1939) 2 ML J
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- 46 MI J 596 Ref (1939) 2
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48 MD J 288 Not Foll (1939)
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49 ML J 273 Coll (1939) 1 MI
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542 Ref ILR 1939 Mad
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544 Drapper ILR 1939
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616 Ref ILR 1939 Mad
863 (I B)
65 Coll ILR 1939 Mad
809=(1939) 1 MI J 62
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671 Appl (1939) 2 MI J
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51 ML J 126 Ref ILR 1939
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111 Treated as Overruled
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59 ML J 299 Ref (1939) 1 ML
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677 Over (1939) 1 ML J
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54 ML J 750 Doubted (1939)
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55 ML J 242 (P C) Dist (1939)
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627 (P C) Ref (1939) 2
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844 Ref ILR 1939 Mad
368=(1939) 1 ML J 91
56 ML J 394 Coll (1939) 1 ML
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673 Ref ILR 1939 Mad
622=(1939) 1 ML J 831
53 MI J 349 Ref ILR 1939
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608 Appl (1939) 2 MI J
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59 ML J 531 Ref ILR 1939
Mad 622=(1939) 1 MI
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718 Foll (1939) 1 MI J
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60 ML J 606 Ref ILR 1939
Mad 566=(1939) 1 ML
J 588
61 ML J 544 Drapper ILR
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62 ML J 223 Cons 1939 Rang
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64 MI J 401 Not Appl (1939) 2
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455 Ref I.L.R. 1939 Mad
374=(1939) 1 M.L.J. 163
65 M.L.J. 725 Overr. I.L.R. 1939
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— 775 Ref (1939) 2 M.L.J.
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66 M.L.J. 65 (P.C.) Ref I.L.R.
1939 Mad 776
— 277 Appr. I.L.R. 1939
Mad 585=(1939) 1 M.L.
J. 839
— 353 Ref (1939) 2 M.L.J.
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— 412 Ref I.L.R. 1939 Mad
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— 570 Ref (1939) 1 M.L.J.
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67 M.L.J. 70 (P.C.) Ref I.L.R.
1939 Nag 312
— 266 (P.C.) Ref (1939) 1
M.L.J. 630
— 563 Ref I.L.R. 1939 Mad
525=(1939) 1 M.L.J. 745.
(1939) 1 M.L.J. 28
68 M.L.J. 67 Ref I.L.R. 1939
Mad 853
— 251 Ref (1939) 1 M.L.J.
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— 368 Ref (1939) 1 M.L.J.
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— 713=A.I.R. 1935 Mad
312 Foll (1939) 2 M.L.J.
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69 M.L.J. 206 Ref (1939) 1 M.L.
J. 615.
— 239 Ref I.L.R. 1939 Mad.
794=(1939) 1 M.L.J. 334;
Not Foll (1939) 2 M.L.J.
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— 695 Ref I.L.R. 1939 Mad.
81=(1939) 2 M.L.J. 604
— 791 Foll. (1939) 1 M.L.J.
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71 M.L.J. 268 Ref (1939) 1 M.L.
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— 294 Ref I.L.R. 1939 Mad
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— 336 Foll (1939) 2 M.L.J.
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— 383=43 L.W. 715 Foll
(1939) 1 M.L.J. 425
— 541 Ref I.L.R. 1939 Mad
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(1937) 1 M.L.J. 231 Appr. I.L.R.
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— 407 Appr. I.L.R. 1939
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— 572=A.I.R. 1937 Mad
402 Dist (1939) 1 M.L.J.
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(1937) 2 M.L.J. 359 (P.C.) Foll
(1939) 2 M.L.J. 415
— 594 Ref (1939) 1 M.L.J.
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— 711 Foll (1939) 2 M.L.J.
423
— 931 Ref I.L.R. 1939 Mad.
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(1938) 1 M.L.J. 171 Ref (1939)
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— 174 Appl (1939) 1 M.L.J.
199
— 249 Diss 1939 Rang L.R.
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— 710 Rel. (1939) 1 M.L.J.
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— 715 Rel (1939) 1 M.L.J.
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— 781 Dist (1939) 1 M.L.J.
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— 824 Overr. I.L.R. 1939
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(1938) 2 M.L.J. 33 Cons (1939)
1 M.L.J. 68
— 44 Foll (1939) 2 M.L.J.
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— 462 Diss (1939) 1 M.L.J.
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— 385 Ref (1939) 2 M.L.J.
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— 430 Ref. I.L.R. 1939 Mad
803=(1939) 1 M.L.J. 802
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— 501 Appl (1939) 2 M.L.J.
884 (F.B.)
— 1048 Foll (1939) 2 M.L.J.
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— 756=A.I.R. 1939 P.C. 47
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— 225 Dist (1939) 2 M.L.J.
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— 233 Dist. (1939) 2 M.L.J.
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3 L.W. 105 Foll. (1939) 2 M.L.J.
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— 512 Appl (1939) 1 M.L.J.
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— 234 Ref I.L.R. 1939 Mad
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— 672 Ref. (1939) 1 M.L.J.
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6 L.W. 284 Diss (1939) 1 M.L.J.
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7 L.W. 124 Foll I.L.R. (1939) Mad
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— 280 Ref I.L.R. 1939 Mad
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7 L.W. 339 Ref (1939) 1 M.L.J.
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8 L.W. 160 Ref. (1939) 2 M.L.J.
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9 L.W. 1 Ref I.L.R. 1939 Mad
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11 L.W. 148 Ref (1939) 1 M.L.J.
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 10 N.L.R. 133 Foll I.L.R. 1939
 Nag 1
 11 N.L.R. 76 Ref I.L.R. 1939
 Nag 226
 12 N.L.R. 90 Foll I.L.R. 1939
 Nag 1
 13 N.L.R. 32 Foll I.L.R. 1939
 Nag 165
 — 89 Diss I.L.R. 1939 Nag.
 185.
 — 187 Foll. I.L.R. 1939 Nag.
 383
 14 N.L.R. 78 Foll I.L.R. 1939
 Nag 266
 — 82 Foll I.L.R. 1939 Nag.
 383
 — 165 (P.C.) Diss I.L.R.
 1939 Nag 59
 15 N.L.R. 97 Diss I.L.R. 1939
 Nag 510
 16 N.L.R. 23 Ref I.L.R. 1939
 Nag 338
 — 76 Foll. I.L.R. 1939 Nag.
 580
 17 N.L.R. 1 Dist I.L.R. 1939
 Nag 648
 — 45 Overr. I.L.R. 1939
 Nag 165
 — 84 (P.C.) Diss I.L.R.
 Nag 521

- 17 NLR 202 Ref ILR 1939
Nag 515
- 18 NLR 98 Appr ILR 1939
Nag 357
—152 Foll ILR 1939 Nag
450
—200 Foll ILR 1939 Nag
492
- 20 NLR 7 Dst ILR 1939
Nag 160
—43 Foll ILR 1939 Nag
300
—93 Ref ILR 1939 Nag
350
- 22 NLR 136 Diss & Foll ILR
1939 Nag 1
—173 Not Appr ILR 1939
Nag 403
- 23 NLR 8 Diss ILR 1939 Nag
1
—100 Overr ILR 1939
Nag 250
—143 Foll ILR 1939 Nag
64
- 24 NLR 36 Rel ILR 1939
Nag 367
—54 Foll ILR 1939 Nag
592
—55 Overr ILR 1939 Nag
250 Ref ILR 1939 Nag
350
—177 (FB) Ref ILR 1939
Nag 104
—182 Foll ILR 1939 Nag
574
- 25 NLR 144 (FB) Foll ILR
1939 Nag 88
- 26 NLR 81 Rel ILR 1939
Nag 216
—127 Dst ILR 1939 Nag
548
—326 (PC) Ref ILR 1939
Nag 607
- 27 NLR 75 Rel ILR 1939
Nag 526
—95 (PC) Ref ILR 1939
Nag 104
—113 Foll ILR 1939 Nag
1
—179 (FB) Dist ILR 19
1939 Nag 484
- 28 NLR 134 Ref ILR 1939
Nag 601
—179 Dst ILR 1939 Nag
285
—198 Ref ILR 1939 Nag
221
—250 Dist ILR 1939 Nag
521
- 29 NLR 10 Rel ILR 1939
Nag 403
- 30 NLR 306 Foll ILR 1939
Nag 1
—148 Rel ILR 1939 Nag
246
—351 Rel ILR 1939 Nag
403
- 31 NLR 67 Foll ILR 1939
Nag 548
- 13 NLR Supp 72 Ref ILR
1939 Nag 250 350
—Supp 96 Ref ILR 1939
Nag 1
—Supp 111 Rel ILR 1939
Nag 367
—Supp 180 Ref ILR 1939
Nag 88
—239 Foll ILR 1939 Nag
398
—297 Foll ILR 1939 Nag
419
—318 Ref ILR 1939 Nag
297
- ILR 1936 Nag 115 Foll ILR
1939 Nag 432
- ILR 1937 Nag 38 Ref ILR
1939 Nag 180
—137 Dst ILR 1939 Nag
170
—191 (PC) Foll ILR
1939 Nag 47
—219 Rel ILR 1939 Nag
306
—246 Foll ILR 1939 Nag
408
—261 Foll ILR 1939 Nag
398
—380 Dst ILR 1939 Nag
478
—403 Foll ILR 1939 Nag
377
- ILR 1938 Nag 333 Expl ILR
1939 Nag 160
—535 Not Appr ILR 1939
Nag 510
- NAGPUR LAW JOURNAL
- 19 NLJ 175 Dst ILR 1939
Nag 285
—296 Foll ILR 1939 Nag
104
- 20 NLJ 12 Foll ILR 1939
Nag 580
—25 Foll ILR 1939 Nag
104
—73 Rel ILR 1939 Nag
246
- 1939 NLJ 85 Appr ILR 1939
Nag 498
- CP LAW REPORTS
- 11 CPLR 11 Dist ILR 1939
Nag 293
- 13 CPLR 48 Ref ILR 1939
Nag 274
- 15 CPLR 81 Foll ILR 1939
Nag 300
—163 Foll ILR 1939 Nag
580
- SIND LAW REPORTS
- 1 SLR 133 Expl ILR 1939
Kar 597
—226 Rel ILR 1939 Kar
330
- 2 SLR 22 Rel ILR 1939 Kar
330
- 5 SLR 136 Foll ILR 1939
Kar 280
- 6 SLR 256 Expl ILR 1939
Kar 50
- 10 SLR 68 Ref ILR 1939 Kar
370
—192 Foll ILR 1939 Kar
64
- 12 SLR 104 (PC) Rel ILR
1939 Kar 475
- 15 SLR 47 Doubt ILR
1939 Kar 409
—61 Rel ILR 1939 Kar
330
—171 Dist ILR 1939 Kar
385
- 17 SLR 263 Rel ILR 1939
Kar 275
- 18 SLR 19 (FB) Foll ILR
1939 Kar 409
—311 Foll ILR 1939 Kar
432
- 19 SLR 30 Rel ILR 1939
Kar 330
- 20 SLR 352 Diss ILR 1939
Kar 75
- 23 SLR 43 Foll ILR 1939
Kar 228
—411 Ref ILR 1939 Kar
55
- 24 SLR 132 Ref ILR 1939
Kar 589
—195 Rel ILR 1939 Kar
509
- 25 SLR 25 Rel ILR 1939
Kar 589
—374 Foll ILR 1939 Kar
300
—405 Ref ILR 1939 Kar
417
- 26 SLR 429 Rel ILR 1939
Kar 359
- 27 SLR 67 Overr ILR 1939
Kar 85
- 28 SLR 119 Foll ILR 1939
Kar 204
- 29 SLR 121 Rel ILR 1939
Kar 677
—236 Ref ILR 1939 Kar
589
- 31 SLR 32 Dist ILR 1939
Kar 330
- 30 SLR 88 Foll ILR 1939
Kar 589
—271 Rel ILR 1939 Kar
330
—371 Rel ILR 1939 Kar
136 269
- 32 SLR 215 Dist ILR 1939
Kar 330
—415 (PC) Foll ILR
1939 Kar 502
—476 (PC) Rel ILR 1939
Kar 204
—502 Ref ILR 1939 Kar
283 Rel ILR 1939 Kar
439

32 S.L.R. 810 = 40 Bom L.R. 1075
(P.C.) Foll. I.L.R. 1939
Kar 523.

I.L.R. KARACHI.

I.L.R. 1939 Kar 64 Rel I.L.R.
1939 Kar 204
241 Rel I.L.R. 1939 Kar
388
248 Ref I.L.R. 1939 Kar
203

A.I.R. (PRIVY COUNCIL)

1918 P.C. 81 Foll. 14 Luck 483
1919 P.C. 55 Expl. I.L.R. 1939
Nag 276
1922 P.C. 176 Foll. I.L.R. 1939
Nag 318
1924 P.C. 221 Dist. I.L.R. 1939
Kar 530
1925 P.C. 75 Dist. I.L.R. 1939
Kar 530
127 Ref 41 Bom L.R. 760
155 Ref 1939 F.C.R. 159;
193; I.L.R. 1939 Nag 124
181 Expl. I.L.R. 1939 Kar
140
1929 P.C. 289 Dist. 14 Luck 277.
1930 P.C. 144 Foll. 18 Pat 580
1931 P.C. 33 Dist. I.L.R. 1939
Lah 116
229 Ref I.L.R. 1939 Nag
515
234 Ref 14 Luck 78.
1932 P.C. 99 Ref I.L.R. 1939
All. 185.
146 Ref 14 Luck 442
165 Foll. 1939 A.L.J. 29.
1933 P.C. 58 Rel 1939 F.C.R.
159; 193
1934 P.C. 167 Ref I.L.R. 1939
Lah 131; Rel I.L.R. 1939
Nag 569
213 Rel I.L.R. 1939 Kar.
330.
246 Ref I.L.R. 1939 Kar.
283.
1935 P.C. 70 Dist. I.L.R. 1939
Kar 530
147 Dist. I.L.R. 1939 All.
602.
1937 P.C. 274 Rel. I.L.R. 1939
Nag. 160.
1938 P.C. 77 Ref. 66 I.A. 177.
130 Foll. I.L.R. 1939 Nag.
644.
175 Rel. I.L.R. 1939 Lah.
47.

A.I.R. (ALLAHABAD).

1921 All 102 Expl. I.L.R. (1939)
1 Cal. 530
325 Ref I.L.R. 1939 Nag
137.
1924 All 205 Foll. I.L.R. 1939
Kar. 165
617 Rel. 1939 A.L.J. 582.
1925 All 29 Foll. 14 Luck 247.
68 Appr. I.L.R. 1939 All.
647.

1925 All 240 Foll. I.L.R. 1939
All 354 = 1939 A.L.J. 221
1926 All 90 Reviewed 18 Pat
261
95 Ref 14 Luck 453
157 Rel I.L.R. 1939 Lah
381
263 Ref 1939 F.C.R. 193
401 Ref 1939 F.C.R. 193
1927 All 118 Appr. I.L.R. 1939
All 67
208 Ref I.L.R. 1939 All
150
355 Rel 14 Luck 308
1929 All 85 Ref I.L.R. 1939 All
150
267 Ref I.L.R. 1939 Lah
221
677 Ref 14 Luck 453
751 Cons (1939) 1 M.L.J.
301
883 Appr. I.L.R. 1939 All
67
914 Ref I.L.R. 1939 All.
57
1930 All 82 Ref I.L.R. 1939
Mad. 820 = (1939) 2 M.L.
J. 653
127 Reviewed 18 Pat. 261.
188 Foll. I.L.R. 1939 Mad
338 = (1939) 1 M.L.J. 39.
443 Ref. 14 Luck. 346
577 Foll. 18 Pat 417
1931 All 159 Dist. I.L.R. 1939
Mad. 216 = (1939) 1 M.L.
J. 38.
229 Ref. I.L.R. 1939 Nag.
137.
392 (F.B.) Dist. I.L.R. 1939
Nag 81.
659 Disc. 14 Luck. 116
1932 All 63 Ref. 1939 A.L.J. 389
85 Ref 1939 F.C.R. 193
136 Ref. 1939 F.C.R. 193.
653 Appr. I.L.R. 1939 All.
518.
657 Ref I.L.R. 1939 Nag.
200.
696 Ref. 1939 F.C.R. 193
1933 All 7 Ref I.L.R. 1939 All.
24.
135 Dist. I.L.R. (1939) 1
Cal. 471.
230 Rel 14 Luck. 40.
281 Ref I.L.R. 1939 All.
178
340 Foll. I.L.R. 1939 Nag
478
631 Appl. I.L.R. 1939 All.
89
1934 All 100 Appr. I.L.R. 1939
All 399 = 1939 A.L.J. 193
139 Appl. I.L.R. 1939 All.
594 = 1939 A.L.J. 428
152 Ref I.L.R. 1939 Nag.
515
795 Ref (1939) 2 M.L.J.
604
974 Rel I.L.R. 1939 Lah.
156

1935 All 53 Ref I.L.R. 1939 Nag
137
753 Overr. 1939 A.L.J.
489.
802 Ref 1939 A.L.J. 9
898 Foll. 18 Pat 114
985 Ref 1939 A.L.J. 335.
1936 All 213 Rel. 1939 A.L.J.
138
507 (F.B.) Foll. I.L.R.
1939 Nag 383
514 Foll. I.L.R. 1939 Nag
641
584 Foll. I.L.R. (1939) 2
Cal 68; (1939) 1 M.L.J.
738
641 Rel 14 Luck 483.
820 (F.B.) Foll. 18 Pat.
378
1937 All 317 (F.B.) Foll. 41 Bom.
L.R. 485
640 Dist. 14 Luck 456.
781 Ref (1939) 1 M.L.J.
738
1938 All 1 Dist. 1939 Rang. L.R.
140.
304 Rel. I.L.R. 1939 Lah.
201.
1939 All. 262 (F.B.) Dist. I.L.R.
1939 Nag. 124

A.I.R. (BOMBAY)

1920 Bom 35 Foll. I.L.R. 1939
Nag 285.
1921 Bom 370 Ref I.L.R. 1939
Lah. 221.
1923 Bom 239 Not Appr. I.L.R.
1939 All. 200.
1924 Bom. 39 Appr. I.L.R. 1939
All. 207.
90 Dist. I.L.R. (1939) 2
Cal 199
381 Foll. I.L.R. 1939 Nag.
641.
1926 Bom. 140 Rel I.L.R. 1939
Kar. 409
226 Not Foll. I.L.R. 1939
Nag 457.
1928 Bom 177 Ref I.L.R. 1939
Mad 803 (F.B.)
245 Ref. 1939 F.C.R. 193.
1930 Bom. 11 Rel I.L.R. 1939
Nag 200.
1931 Bom. 500 Dist 18 Pat. 708;
Foll. 18 Pat 271.
1932 Bom. 232 Rel I.L.R. 1939
Kar. 330
378 Dist. I.L.R. 1939 Lah.
319
434 Foll. I.L.R. 1939 Nag.
624
466 Ref I.L.R. 1939 All.
435 = 1939 A.L.J. 260.
516 Foll. I.L.R. (1939) 2
Cal. 312.
584 Ref 14 Luck 116.
1933 Bom. 135 Disappr. I.L.R.
1939 Mad 242.
185 Rel I.L.R. 1939 Ka
160.
1934 Bom 31 Rel I.L.
Kar 160.

- 1934 Bom 113 Ref 14 Luck 453.
 —306 Ref 1939 Rang L R
 117
 —385 Rel I I R 1939 Kar
 275
 1935 Bom 198 Foll I L R 1939
 Nag 641
 1936 Bom 98 Rel I L R 1939
 Kar 60
 —277 Dist I L R 1939 Nag
 285
 1937 Bom 476 Rel 1939 A L J
 1020
 1938 Bom 289 Rel 1939 A L J
 1020
 1939 Bom 63 Ref 1939 F C R.
 159
 —75 Appr I L R 1939 All.
 647=1939 A L J 522

AIR (CALCUTTA)

- 1914 Cal 692 Foll I L R 1939
 Nag 350
 1921 Cal 101 Rel 14 Luck 543
 1922 Cal 35 Rel 1939 A L J
 542
 —226 Rel 14 Luck 65
 1923 Cal 405 Dist I L R 1939
 All 167
 1924 Cal 264 Disappr I L R
 1939 Mad 242=(1939) 1
 M L J 301
 —1047 Dist 18 Pat 688
 1925 Cal 158 Rel I L R (1939)
 2 Cal 1
 —318 Ref 1939 F C R 193
 —475 Diss 18 Pat 271
 —788 Not Foll I L R 1939
 Nag 580
 —1015 Foll I L R 1939 Kar
 378
 1926 Cal 65 Ref I L R 1939
 Bom 173
 —248 Rel I L R (1939) 2
 Cal 370
 —610 Ref 1939 F C R 193
 —1053 Foll 18 Pat 539
 1927 Cal 32 Not Foll I L R 1939
 Nag 463
 —203 Ref I L R 1939 Kar
 428
 —285 Foll I L R 1939 Nag
 350
 —509 Ref I L R 1939 All
 178
 —522 Ref I L R 1939 All
 150
 —538 Ref 14 Luck 151
 1928 Cal 321 Dist I L R 1939
 Lah 119
 —828 Not Foll I L R 1939
 Nag 357
 1929 Cal 203 Foll I L R 1939
 Nag 338
 —724 Ref 1939 F C R 159
 1930 Cal 252 Dist I L R 1939
 Kar 359
 —539 Ref 41 Bom L R 815

- 1931 Cal 779 Foll I L R 1939
 Nag 350
 1932 Cal 448 Ref 14 Luck 442
 1933 Cal 718 Foll 18 Pat 698
 1934 Cal 7 Foll 18 Pat 698
 —532 Rel I I R 1939 Nag
 180
 —845 Dist 18 Pat 708 Foll
 18 Pat 271
 1935 Cal 153 Foll (1939) 1 M L
 J 120
 —282 Dist I L R 1939 Nag
 580
 —648 Ref I L R 1939 All
 258=1939 A L J 66
 —760 Ref I L R 1939 Kar
 18
 1936 Cal 18 Foll 18 Pat 698
 —294 Dist I L R (1939) 1
 Cal 314
 —381 Not Foll 18 Pat 676
 —688 Ref I L R 1939 Nag
 124
 1937 Cal 99 Ref I L R (1939) 1
 Cal 1
 —347 Rel I L R 1939 Nag.
 64
 —517 Ref I L R 1939 Mad
 853
 1938 Cal 25 Ref I L R 1939 Kar
 502
 —745 Ref 14 Luck 442

AIR (LAHORE)

- 1919 Lah 235 Ref I L R 1939
 Mad 820=(1939) 2 M L
 J 657
 1921 Lah 72 Not Foll I L R
 1939 Lah 100
 —363 Appl I L R 1939 All
 286
 1923 Lah 373 Ref 14 Luck 176
 —423 Ref I L R 1939 Nag
 641
 1924 Lah 339 Ref 41 Bom L R
 585
 —599 Diss I L R 1939 Nag
 185
 —680 Diss I L R 1939 Lah
 283
 1925 Lah 344 Not Foll I L R
 1939 Nag 580
 —416 Rel 14 Luck 40
 —590 Ref 1939 Rang L R
 403
 1926 Lah 45 Rel I L R 1939 Lah
 53
 —134 Ref I L R 1939 All
 354
 —198 Rel I L R 1939 Mad
 242=(1939) 1 M L J 301
 —370 Rel I L R 1939 Lah
 275
 —607 Ref 14 Luck 453
 —670 Rel I L R 1939 Lah
 183
 1927 Lah 396=100 I C 922
 Appr 43 C W N 641=
 41 Bom L R 742=1939

- A L J 697=1939 Rang
 L R 358 (P C)
 1927 Lah 900 (2) Dist (1939) 2
 M L J 836
 —909 Ref I L R 14 Luck
 4
 1928 Lah 382 Ref I L R 1939
 Nag 180
 —562 Ref (1939) 2 M L J
 604
 —827 Dist I L R 1939 Nag
 139
 —936 Ref I L R 1939 Nag
 521
 1929 Lah 23 Dist I L R 1939
 All 57
 —51 Not Foll I L R 1939
 Nag 54
 —96 Foll I L R 1939 Nag
 157
 —399 Rel 14 Luck 40
 —446 Ref 14 Luck 176
 —605 Ref I L R 1939 Nag
 641
 —815 Ref 1939 F C R 193
 1930 Lah 176 Foll I L R 1939
 Nag 631
 —331 Diss I L R 1939 Lah
 30
 —361 Rel I L R 1939 Lah
 381
 —746 Dist I L R 1939 Nag
 463
 —755 Ref 14 Luck 176
 —853 Ref I L R 1939 Lah
 408
 1931 Lah 159 Diss I L R 1939
 Lah 381
 —600 Foll I L R 1939 Mad
 338=(1939) 1 M L J 39
 —630 Foll I L R 1939 Nag
 357
 1932 Lah 188 Ref I L R 1939
 Lah 221
 —231 Foll I L R 1939 Lah
 313
 —356 Rel 41 Bom L R 308
 —426 Rel 14 Luck 483
 —627 Appr I L R 1939 Lah
 385
 1933 Lah 159 Foll 18 Pat 121
 —172 Not Foll I L R 1939
 Lah 100
 —473 Not Foll I L R 1939
 Nag 54
 —660 Diss 41 Bom L R 980
 —661 Diss I L R 1939 Kar
 75 Ref 18 Pat 544
 1934 Lah 63 Ref I L R 1939
 Lah 408
 —231 Diss 14 Luck 116
 —324 Foll I L R 1939 Lah
 183
 —328 Rel I L R 1939 Nag
 54
 —563 Ref 14 Luck 346
 —958 Ref I L R 1939 Kar
 589
 —979 Diss I L R 1939 Lah
 30

1935 Lah. 17 Foll. I.L.R. 1930 Bom 82	1920 Mad 847 Foll 1939 A.L.J. 1011	1929 Mad 187 Dist I.L.R. 1939 Mad 333
21 Disappr. I.L.R. 1930 Nag 276	336 Ref I.L.R. (1939) 2 Cal 291	394 Not Foll I.L.R. 1939 Nag 559
28 Rel I.L.R. 1930 Lah. 381	1922 Mad 83 Foll 18 Pat 210	409 Dist I.L.R. 1939 Nag 216
144 Diss I.L.R. 1930 Lah. 295	1923 Mad 323 Rel (1930) 1 M.L.J. 899	443 Foll (1939) 2 M.L.J. 872
169 Foll I.L.R. 1930 Lah 313	337 Ref I.L.R. 1939 Mad 515	465 Ref (1939) 1 M.L.J. 770
292 Foll 18 Pat 395	562 Dist I.L.R. 1930 Nag 450	506 Ref 1939 F.C.R. 193
293 R-1 I.L.R. 1930 Kar. 475-	597 Ref I.L.R. 1939 Kar 283	508 Ref (1939) 2 M.L.J. 718
705 Diss I.L.R. 1930 All 6	607 Ref (1939) 1 M.L.J. 334	511 Rel (1939) 1 M.L.J. 646
753 Ref I.L.R. 1939 Nag 544	1924 Mad 234 Ref 1939 F.C.R. 193.	641 Dist 18 Pat 688
893 Foll 18 Pat 114	455 Rel I.L.R. 1939 Kar. 55	1930 Mad 154 Ref. 14 Luck 78 389 Rel 14 Luck 40
919 Rel 14 Luck 442	457 Ref 18 Pat. 670	714 Ref I.L.R. 1939 Nag 515
1936 Lah. 200 Rel J.L.R. 14 Luck 4	509 Ref. I.L.R. 1939 All. 150, 1939 A.L.J. 53	844 Ref 14 Luck. 351.
222 Rel I.L.R. 1939 Kar. 269	711 Rel I.L.R. 1939 Nag 544	1931 Mad 26 Cons (1939) 1 M.L.J. 473
239 Ref 14 Luck. 538.	767 Ref 1939 F.C.R. 193	120 Ref. 1939 A.L.J. 542
271 Diss I.L.R. 1939 All 6	1925 Mad 316 Cons (1939) 2 M.L.J. 611	471 Rel I.L.R. 1929 Kar 330
304 Diss I.L.R. 1939 Bom 256=41 Bom I.R. 195	639 Not Appr. I.L.R. 1939 All 403	531 Ref. (1939) 2 M.L.J. 284
311 Ref I.L.R. 1939 All 607	765 Ref 14 Luck 442.	601 Ref. 1939 A.L.J. 128
519 Appr I.L.R. 1939 All 162	841 Com I.L.R. 1939 Bom 533=41 Bom I.R.	797 Ref I.L.R. 1939 Nag 530
563 Rel I.L.R. 1939 Lah. 275	589	1932 Mad. 214 Ref 1939 F.C.R. 159
781 Diss. I.L.R. 1939 Lah. 227.	909 Not Appr. I.L.R. 1939 All 403	227 Ref I.L.R. 1939 Nag 88
843 Ref. (1939) 1 M.L.J. 683	1926 Mad 12 Rel I.L.R. 1939 Lah. 103.	685 Ref I.L.R. 1939 Kar 602
1937 Lah. 145 Diss I.L.R. 1939 Lah. 295	225 Foll I.L.R. 1939 Mad 328	1933 Mad 80 Rel I.L.R. (1939) 1 Cal 63
182 Rel. I.L.R. 1939 Lah 164	347 Rel I.L.R. 1939 Nag 452	105 Rel. I.L.R. 1939 Nag 206
186 Ref I.L.R. 1939 Lah 131	1927 Mad 1 Dist 14 Luck 404	185 Rel I.L.R. 1939 Nag 266.
346 Dist I.L.R. 1939 Lah 183	441 Ref 14 Luck. 116	346 Disappr I.L.R. 1939 Mad 78
408 Appr. I.L.R. 1939 Lah. 30.	820 Ref (1939) 1 M.L.J. 517.	659 Appr I.L.R. 1939 Mad. 622.
618 Diss. I.L.R. 1939 Lah. 408.	886 Dist (1939) 1 M.L.J. 517.	1934 Mad 573 Ref 18 Pat 670
642 Ref. I.L.R. 1939 All 647.	937 Foll I.L.R. 1939 Mad 73.	664 Rel I.L.R. 1939 Kar 156
820 Ref I.L.R. 1939 Nag. 235	997 Diss. I.L.R. 1939 All. 207; Dist I.L.R. 1939 All 103	1935 Mad. 318 (2) Rel 14 Luck 156
851 Dist. I.L.R. 1939 Lah. 27.	1928 Mad 28 Rel 14 Luck 453. 66 Ref. 14 Luck 442.	616 Ref 14 Luck. 366
1938 Lah. 347 Ref. I.L.R. 1939 Nag 235	211 (2) Ref (1939) 1 M.L. J 64	890 Ref I.L.R. 1939 Mad 776.
767 Foll 18 Pat. 114.	226 Foll. I.L.R. 1939 Mad. 65	988 Appr I.L.R. 1939 All 162
842 Ref I.L.R. 1939 Lah. 385	294 Foll 18 Pat. 539	1936 Mad. 8 Ref I.L.R. 1939 Lah 131
	496 Held overruled by 56 Mad 692; I.L.R. 1939 All 162.	24 Dist. I.L.R. (1939) 1 Cal 112.
	546 Ref I.L.R. 1939 Lah. 261.	179 Appr I.L.R. 1939 All 162
A.L.R. (MADRAS)	555 Ref (1939) 1 M.L.J. 894	470 Ref. 14 Luck. 176
1915 Mad. 449 Ref I.L.R. 1939 Mad. 559	571 Ref (1939) 2 M.L.J. 604	526 Not Foll (1939) 2 M. L.J. 44
1917 Mad. 344 Ref 1939 F.C.R. 159	784 Ref I.L.R. 1939 Nag 530.	543 Appr I.L.R. 1939 Bom 271=41 Bom I.R.
1919 Mad 715 Rel I.L.R. (1939) 1 Cal 257	929 Foll I.L.R. 1939 Mad. 328.	371.
1920 Mad 145 Diss. J.L.R. (1939) 1 Cal. 273		808 Foll 1939 A.L.J.

1936 Mad 915 Ref 14 Luck 404
 — 991 Foll 18 Pat 114
 1937 Mad 150 Foll I L R 1939
 Nag 492
 — 273 Disappr I L R 1939
 Nag 241
 — 301 (F B) Rel I L R 1939
 Lah 373
 — 449 Ref 14 Luck 176
 — 537 Rel I L R (1939) 1
 Cal 257
 — 711 Foll I L R 1939 Nag
 534
 — 767 Not Foll 18 Pat 114
 — 826 Ref (1939) 1 M I J
 770
 — 864 Foll 18 Pat 370
 — 997 Diss 1939 A L J 29
 1938 Mad 1 Ref I L R 1939 Lah
 191
 — 47 Ref (1939) 1 M L J
 476
 — 360 (F B) Foll 18 Pat
 155
 — 394 Ref (1939) 2 M L J
 753
 — 688 Ref I L R 1939 Bom
 104
 — 771 Rel (1939) 2 M L J
 80
 — 779 Ref (1939) 2 M L J
 533
 — 796 (F B) Rel 1939 A L J
 278
 — 914 Dist (1939) 1 M L J
 456
 1939 Mad 120 (F B) Appr 1939
 A L J 836 (P C)

AIR (NAGPUR)

1918 Nag 66 Foll 18 Pat 509
 1923 Nag 139 Ref I L R 1939
 Nag 221
 — 161 (2) Not Foll I L R
 1939 Nag 357
 — 167 Foll I L R 1939 Nag
 648
 — 192 Foll I L R 1939 Nag
 580
 1924 Nag 53 Appr I L R 1939
 All 313
 — 97 Disappr I L R 1939
 All 313
 — 155 Rel I L R 1939 Nag
 521
 — 308 Dist I L R 1939 Nag
 648
 1925 Nag 108 Dist I L R 1939
 Kar 359
 — 157 Not Foll 18 Pat 404
 — 239 Diss I L R 1939 Nag
 119
 — 270 Foll I L R 1939 Nag
 580
 1926 Nag 29 Ref I L R 1939
 Nag 540
 — 306 Dist I L R 1939 Kar
 359

1928 Nag 100 Dist I L R 1939
 Nag 521
 — 176 Ref I L R 1939 Nag
 274
 — 199 Rel I L R 1939 Nag
 306
 — 237 Foll I L R 1939 Nag
 1
 1929 Nag 11 Foll I L R 1939
 Nag 478
 — 191 Foll I L R 1939 Nag
 347
 — 254 Appr I L R 1939 All
 313 = 1939 A L J 362
 1930 Nag 59 Dist I L R 1939
 Nag 79 Ref 14 Luck 156
 1931 Nag 82 (2) Ref I L R 1939
 Kar 121
 — 122 Ref (1939) 1 M L J
 64
 — 134 (F B) Diss I L R
 1939 Kar 241
 1932 Nag 22 Rel 14 Luck 40
 1933 Nag 285 Not Foll I L R
 1939 Nag 347
 — 287 Ref I L R 1939 Nag
 276
 1934 Nag 171 Rel I L R 1939
 Nag 266
 — 241 Rel I L R 1939 Nag
 521
 1935 Nag 46 Ref 14 Luck 492
 — 48 Ref I L R 1939 Nag
 641
 — 52 Ref 1939 F C R 159
 — 209 Ref 14 Luck 442
 1936 Nag 69 Ref 41 Bom L R
 1007
 1937 Nag 16 Foll I L R 1939
 Nag 285
 — 91 Ref I L R 1939 Nag
 338
 — 116 Disappr I L R 1939
 Nag 432
 — 140 Foll I L R 1939 Nag
 357
 — 147 Rel 14 Luck 156
 — 154 Ref I L R 1939 Mad
 358
 — 223 Rel I L R 1939 Nag
 246
 1938 Nag 183 Ref 14 Luck 176
 — 391 Diss 14 Luck 483
 1939 Nag 57 (F B) Foll 18 Pat
 429

AIR (ODDH)

1923 Oudh 1181 Ref 14 Luck 116
 1924 Oudh 255 Not Appr I L R
 1939 All 366
 1926 Oudh 45 Ref 1939 Rang
 L R 594
 1928 Oudh 438 Ref 14 Luck 247
 1929 Oudh 117 Diss 14 Luck 223
 1930 Oudh 53 Foll I L R 1939
 Nag 478
 — 95 Foll I L R 1939 All
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266
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119
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1026

THE YEARLY DIGEST, 1939.

I—INDIAN DECISIONS.

ABADI.

- See also (1) C P LAND REVENUE ACT
(2) CO SHARERS—ABADI
(3) CUSTOM (PUNJAB)
(4) LANDLORD AND TENANT

—Nature of—Rights of persons entitled to plots in.

The village . . .
entitled to . . .
when they re . . .
sion and are . . .
the commu . . .
GELICAL GE . . .
GIR . . .

—Sale of house in by tenant to co-sharer—Other co sharers, if can sue for joint possession. See CO-SHARERS—ABADI. 1939 A.W.R. (H.C.) 840.

ABANDONMENT.

- Claim. See (1) AGRA TENANCY ACT S. 107.
(2) C.P. CODE, O. 23, R. 1.
—Holding. See LANDLORD AND TENANT.
—Plea. See PRACTICE.
—Tenancy. See LANDLORD AND TENANT.

ABATEMENT

- Appeal. See C P CODE, O. 22, Rr. 3 & 9.
—Cause of action. See C P CODE, O. 22, R. 1.
—Rent. See (1) LANDLORD AND TENANT.
(2) BENGAL TENANCY ACT, S. 38.
—Suit. See AGRA TENANCY ACT S. 44.
—Wrong. See TORTS

ABDUCTION See PENAL CODE, SS. 363, 366 AND 367.

ABETMENT See PENAL CODE, SS. 109 AND 114.

ABSCONDING. See CRIMINAL TRIAL

ABWAB—Kathari and Mutar,
See BIHAR TENANCY ACT (AS . . .
20 Pat L.T. 88= . . .

- ACCOUNTS** See also (1) DEBTOR AND CREDITOR
(2) HINDU LAW—JOINT FAMILY.
(3) LIMITATION ACT, S. 19.
(4) MORTGAGE.
(5) PARTNERSHIP DISSOLUTION.
(6) PRINCIPAL AND AGENT.
(7) STAMP ACT, ART. 1.
(8) TRUSTS AND TRUSTEES.

—Suit for—Duty of Court to pass preliminary before final decree—Suppression of accounts by defea

ADMINISTRATION SUIT.

dant—If justifies passing of final decree straightaway.
See PRACTICE. 1939 M.W.N. 360=
A I R. 1939 Mad. 671.

—Settled accounts—When re opened—Specific averment of errors—Necessity for in pleadings.

contain any fraudulent entries When a party seeks to re-open a settled account, there must be in the pleadings some direct, distinct and specific averment of errors to entitle the party to open the account. (*Abdul Ghani and Singaratelu Mudaliar, Jf.*) ANANTHA PADMANABHA BHATTA v. SUBBA RAO. 17 Mys L.J. 200=44 Mys H.C.R. 19.

ACKNOWLEDGMENT. See (1) CONTRACT ACT, S. 25 (3).
(2) LIMITATION ACT, SS. 19 AND 20

ACQUIESCENCE—Essentials of

Acquiescence imports full knowledge and it is no more than an instance of the law of estoppel Apart from the full knowledge required, there must be some lying by to the detriment of the other side (*Stone, C. J. and Bose, J.*) KUWARJI v. BHURELAL. 182 I.C. 627=12 R.N. 9=1939 N.L.J. 136=

A I R. 1939 Nag. 163.

"ADJUSTMENT"—Executory agreement—If can be adjustment See C.P. CODE, S. 47 AND O. 21, R. 2. I.L.R. (1939) Kar. 725

SUIT—Constructive trustee—

trustee will not be hable except proved to have received (*Mf. Jayakar.*) ATISUKHLAL v. NATVARLAL. 183 I.C. 885=12 R.P.C. 78=6 B.R. 26=

1939 O.L.R. 586=A I R. 1939 P.C. 238 (P.C.).

—Hindu joint family—Death of father—Absence of separate property—Creditor's suit for administration —It lies. See C.P. CODE. SS. 50, 52 AND 53. 1939 M.W.N. 493=A I R. 1939 Mad. 652.

—Plader's fee—Property involved worth Rs. 1,24,000—Suit notionally valued at Rs. 800—Calculation of fees—Basis of.

ADMIRALTY.

The subject matter of a suit is the actual value of the property to which the plaintiff would be entitled if the suit succeeds and not the notional figure at which the

Rs 800, which the plaintiff had chosen (*Broomfield and Macklin JJ*) *NARHARI v BABURAO*
41 Bom LR 413 = 183 IC 655 = 12 RB 117 =
AIR 1939 Bom 299

loss or damage due to the wrongful acts of the defen

ABDULLA v S S 'ELLORA' AIR 1939 Sind 349
—Collision—Actionability—Carrying of wrong
lights by one ship misleading another—Suit by owner of
former against latter for damages—Maintainability
If a ship by carrying wrong lights or by navigating

perhaps best be expressed as doing something which

ordinarily to be found in a competent seaman, or a
breach of regulation either international or local
governing navigation or equipment, or
inefficient or defective condition of the
equipment. Extraordinary skill or ex
perience is not expected but that degree of skill and that
degree of diligence, which is generally to be found in
persons who discharge their duty (*Davis, J C*)
YOOSAF SAGAR ABDULLA v S S 'ELLORA'
AIR 1939 Sind 349

abroad dead or bankrupt a suit does not lie against the
ship but against the owner (*Davis J C*) *YOOSAF*
SAGAR ABDULLA v S S 'ELLORA'
AIR 1939 Sind 349
—Regulations for preventing collisions at sea
Art 28—Failure to give sound signals to country craft
in open sea—Effect of

ADVERSE POSSESSION

There is nothing in Art 28 of the Regulations for
preventing collision at sea which exempts a steamer
from giving sound signals to a country craft. Failure

show that failure to give sound signals did not con
tribute to the collision (*Davis, J C*) *YOOSAF*
SAGAR ABDULLA v S S 'ELLORA'
AIR 1939 Sind 349
can succeed on

to prove his case
must succeed or
may be false
but it does not
must be held to
be entitled to
the principle which
has been applied in
must recover only
the rule that proof
must not be at variance materially with pleadings and
that a party must state in his pleadings the material
facts on which his case rests and in order to succeed
must prove those material facts must always remain
one of the essentials of legal procedure (*Sen, J*)
NAVIGATION CO v S S 'JANAR'
AIR 1939 Cal 513

See EVIDENCE ACT, S 31
admission—When can be withdrawn
makes a gratuitous admission that the
estate and
there is noth
said admission
withdraw the
(*Collister and*
NWAR FATIMA
= 12 RA 38 =
1939 All 348
—Point of law—Admission by legal practitioner—
See LEGAL PRAC
181 IC 721

of—Applicability in
son's name—Inference
AIR 1939 Pat 462

ADVERSE POSSESSION

Agent or co owner—Possession by
Animus
Burden of proof
Co owners
Co sharers.
Encroachment
Entry in revenue papers
Essentials
Females—Acquisition of title by
Interruption
Landlord and tenant
Mortgagor and mortgagee
Office of mutawalli
Pardanasabin lady
Payment of rent
Possession under invalid title
Revenue papers See ENTRY IN REVENUE
PAPERS
Service tenure.

ADVERSE POSSESSION—Acquisition of title**—Acquisition of title—Possession by tenant**

If a tenant does not claim in himself proprietary rights but claims only a subordinate right that of tenant, the effect of his possession for more than the statutory period is to make the land so possessed a part of his tenancy (*Alister and Son, J.J.*) **ABDUL LATIF v. NAWAB KHAIJEH HABIBULLA.** 69 C.L.J. 28=

A.I.R. 1939 Cal 354

—Agent or co-owner—Possession by

Ouster apart, a man's possession by his agent is not dispossession by his agent. The like is true between co-owners (*Sir George Rankin*) **CADIJA UMMA v. DON MANIS APPU** 1939 A.C. 136=

180 I.C. 971=11 R.P.C. 204=

A.I.R. 1939 P.C. 63 (P.C.)

—Animus—Permissive possession—Presumption**—Property belonging to mother held and enjoyed by son****—Inference of enjoyment on behalf of mother**

The question of adverse possession depends upon animus. In the case of property belonging to a mother which is held by her son, having regard to the relationship between the parties, the *prima facie* would be that the possession and enjoyment is on behalf of the mother (*Venkatarani*) **VEERABHADRAYA v. SEETHAMMA** 1939 M

—Burden of proof

Where in a suit for possession of property the title of the plaintiff, as well as the possession of the defendant for more than 12 years before suit are established and the plaintiff pleads that he has let the defendant in possession as a tenant but that has not been proved and the defendant pleads adverse possession, the burden of proof, in such a case, is on the defendant, and if he does not establish adverse possession, the plaintiff is entitled to a decree for possession. (*Baird, J.*) **MEHERBAN**

to rest

v. HAJI MAHOMED OSEI KHORO.

I.L.R. (1939) Kar 597=A.I.R. 1939 Sind 315

—Co-sharers—Things to be proved—Exclusive and**ADVERSE POSSESSION—Essentials.**

to set up adverse possession against the plaintiff. (*Ranjitmal, J.*) **ALLABUX v. ISSAKH MAHOMED.** 1939 M.L.R. 176 (Civ.).

—Entry in revenue papers—Shamilat deh—Mutwalli in cultivating possession—No rent paid to proprietary body—Effect on title of latter.

Where a portion of the *Shamilat deh* was shown in the revenue papers to be in the possession of a *mutwalli* of a *khankah*, who cultivated the land through his tenants paying no rent to the proprietary body because he served the *khankah*.

Held, that the title in the land still vested in the proprietary body who had given the usufruct to the *mutwalli*, for the time being, for the purposes of the *khankah* (*Tek Chand, J.*) **GHULAM MOHY-UD-DIN v. MOHAMMAD DIN** 41 P.L.E. 283=

A.I.R. 1939 Lah. 313.

—Entry in revenue papers as tenant *bila tasfiya*.

Where a person is in possession of a certain plot as tenant, his possession cannot become adverse to the original proprietor merely because he is entered as

—Essentials—Notice of hostile title to owner—Necessity—Jeroiyati land in zamindari wrongly believed to be *sham* but later discovered to be jeroiyati—Non payment of rent by occupants for 12 years—If creates rent-free title—Belief of occupants of proprietary rights—Effect of.

Adverse possession in order to become a basis of title must be brought to the notice of the owner. Where

title, but as a special survey was conducted before suit,

—Essentials—Right of fishing *inter se* on bed.**—Bed drying up in hot seasons—Continuity of possession.**

In order to acquire title by prescription, or otherwise, the trespasser must show that his possession is continuous, public, and notorious.

ADVERSE POSSESSION—Essentials

—*Essentials*—Land used by neighbour for over 12 years—Land not of present use to owner but convenient to neighbour—User—If amounts to prescription

Where a small piece of land which is of no present use to the owner who is not a resident of the locality, and which is convenient in many ways to his neighbour whose house adjoins the land, is used by the latter in various ways without objection for over 12 years, such user does not amount to adverse possession against owner, and is insufficient to give a title to the adverse possessor. Such acts of possession cannot effectively taken notice of at once by the owner whose interest they are exercised (*Varadachariar*

ADVERSE POSSESSION—Mortgagor and mortgagee

chariar, Lakshmana Rao and Gentle JJ) DHARA PURAM JANOPAKARA NIDHI, LTD v LAKSHMINARAYANA CHETTIAR I L R (1939) Mad 803 = 182 L C 999 = 12 R M 239 = 49 L W 671 = 1939 M W N 488 = A I R 1939 Mad 456 = (1939) 1 M L J 802 (F B)

—*Interruption*—Declaratory decree—Effect of

—*Interruption*—A is in execution of decree—If interrupts adverse possession of stranger

An attachment in execution of a decree does not dispossess the party in possession and it does not interrupt the adverse possession of a stranger holding adversely to the judgment debtor as possession of a stranger is not affected or disturbed by an attachment (*Varadachariar Lakshmana Rao and Gentle JJ*) DHARA PURAM JANOPAKARA NIDHI LTD v LAKSHMINARAYANA CHETTIAR I L R (1939) Mad 803 = 182 L C 999 = 12 R M 239 = 49 L W 671 = 1939 M W N 488 = A I R 1939 Mad 456 = (1939) 1 M L J 802 (F B)

—*Interruption*—Attachment of property—Claim by adverse possessor—Dismissal on ground of delay—Omission to file suit within one year—Effect—Sale

cannot deprive him of the benefit of his prior possession. The finality of the claim order cannot be invoked even by the particular decree holder who is a party to the claim order and in respect of the very decree which is then under execution unless he is proceeding to bring the property to sale in pursuance of that very attach-

—*Interruption*—Effect of

An interruption in the occupation or possession of the person claiming title by adverse possession is sufficient to break the continuity of the possession. (*Sharma*) AGARWAL v MADH

ment of whole property without title—Acquisition of right to undivided share subsequently by right of succession—If alters character of possession or arrests course of limitation

The adverse character of the possession held by a person is not changed by reason of that person subsequently acquiring a share in the property who has been in enjoyment and becomes entitled to the property under a right of inheritance. (*Patanjali*) PATANJALI v MUTHUSWAMI 50 L W 571

—*Interruption*—Khorposhdar adversely enjoying usufruct of adjoining jungle belonging to grantor—Title acquired by See LIMITATION ACT, S 28

—*Landlord and tenant*—Non payment of rent for over 12 years—If creates rent free title to land

—*Mortgagor and mortgagee*—Mortgagor, if can assert adverse possession

A mortgagor who enters into possession of the mortgaged property in his capacity as a mortgagee can never during the continuance of the mortgage assert any adverse possession against the mortgagee. The mortgagor's right to redeem remains alive for sixty years and no question of adverse possession arises until after the

the judgment otherwise to take any

further steps in execution of that decree it cannot be held that the prior possession of the claimant is broken or that he is estopped from pleading his prior possession by reason of the order dismissing his claim and his omission to file a suit under O 21, R 63 C P Code (*Varadachariar*

ADVERSE POSSESSION—Mortgagor and mort-

gagee
 expiration of that period (*Rowland and Chatterji, J.J.*) **WAJID ALI v ALIDAD KHAN** 181 IC 121=
 12 R.P. 222=6 B.R. 19

—Mortgagor and mortgagee—Mortgagee in possession—If can prescribe against mortgagor

In certain circumstances a mortgagee in possession can prescribe against the mortgagor, though generally he cannot (*Fasil Ali and Varma, J.J.*) **BALDEO SINGH v. MUHAMMAD AKHTAR.** 181 IC 504=
 1939 P.W.N. 331=20 Pat L.T. 399=
 A.I.R. 1939 Pat 488

—Office of mutawalli of mosque—Acquisition of by prescription—Society registered under Societies Registration Act—Management of mosque as mutawalli adversely to person claiming to be mutawalli—Effect *See SOCIETIES REGISTRATION ACT, S. 20*
 50 L.W. 731

—Pardanashin lady—Possession adverse to pardanashin—If should be brought home to her knowledge

To constitute adverse possession it is generally sufficient that the possession is overt and without any attempt at concealment so that the person against whom time is running ought if he exercises diligence, to know what is happening. A person whose right is openly usurped cannot be heard to plead that he was not brought to his notice. But this is not the case of a pardanashin woman behind the pardah, who may not be aware of or might not know what was happening notwithstanding the exercise by her of due diligence so far as she could. The Court should be alert to protect the interests of a party in such a case, and should, in her case, rely more on presumptions (*Datta, J.C. and Lobsenz, J.*)
AGANMAL v. ILR

—Payee declared to be adverse S
POSSESSION:

1939 A.W.R. (B.R.) 240

—Possession under invalid title—Exchange neither stamped nor registered—Possession for over 12 years—Effect.

Where a deed of exchange did not convey any title inasmuch as it was neither stamped nor registered, but a party was in possession undisturbed and for over 12 years, he must be held to be in possession of the land concerned. (*1939*)

1939

—Possession under invalid title—When adverse

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DWARKA PERSHAD. 1939 A.W.R. (H.C.) 408=
 1939 R.D. 365=A.I.R. 1939 All 518

—Possession held by wrongdoer for less than

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AGRA PRE-EMPTION ACT (1922), S. 9.

some of his heirs, it would be regarded as possession on behalf of the whole unless and until it is shown that there is an exclusion or ouster of the other co-sharers (*Mukherjee and Latifur Rahman, J.J.*) **KITAL ALI v. ANIL BEHARI DUTTA.** 43 C.W.N. 877=
 70 O.L.J. 93=A.I.R. 1939 Cal 723.

—Inam grant of ownership of soil—Trees on land occupied by khots, dharekaris and permanent tenants prior to grant—Latter cutting, selling and removing trees for over thirty years openly, constantly and without inamdar's consent and without protest from him—Effect of. *See GRANT—CONSTRUCTION.*
 41 Bom.L.R. 805.

—Service tenure—Non performance of service for over 12 years—Effect of. *See GRANT—SERVICE GRANT* 1939 P.W.N. 99=A.I.R. 1939 Pat. 362.

AGRA PRE-EMPTION ACT (XI OF 1922)—Scope
 —Recourse to former rules of pre-emption—If permissible

The Agra Pre-emption Act was intended to consolidate and amend the law relating to pre-emption and therefore it purports to contain the whole of the law of pre-emption. The Act does not intend that of pre-emption and

I.L.R. (1939) All 260=101 I.C. 625=
 11 E.A. 593=1939 A.W.R. (H.C.) 110=
 1939 A.L.J. 253=A.I.R. 1939 All 253.

—S. 4 (1)—Plaintiff and defendant claiming equal shares of the pre-emption—Proof as to—Onus—party that asserts proprietor merely has to establish

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according to law. On the death of such wrongdoer, therefore, whatever right he has in the property devolves upon all his heirs. If possession is continued only by

or 'mahal'.
 The word 'which' occurring in S. 9 of the Agra Pre-emption Act can refer only to 'mahal' and not to 'land'

AGRA PRE EMPTION ACT (1922), S 11

in the section Apparently the intention of the legislature in making the provision in S 9 of the Act is that a person who had at one time been a proprietor in a mahal and who still held an ex proprietary tenancy in any part of the mahal should not be prevented by a

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1939 A W R (H C) 496 = A I R 1939 All 618

S 11—Sale by rent free

rise to a right of pre-emption

ACT, SS 186 AND 192 1938

S 11—Scope and applica

emption if accrues on the exercise of the right of repurchase by the original owner

The right of pre-emption recognized by the Agra Pre-emption Act does not accrue on the exercise of the right of repurchase by the original owner S 11 is exhaustive of the cases in which the right accrues and is confined in its operation where a co-sharer sells any proprietary interest etc The right of repurchase when exercisable tantamount to the sale of the property within S 11 The section applies only to cases of voluntary sales and not to transfers in pursuance of agreement to re-transfer (*Iqbal Ahmad J*) CHUNNI LAL v RAM PRASAD 1939 A W R (H C) 815

S 12—Arazidari—Co sharer in the

khewat—If has the right of pre-emption

By S 12 of the Agra Pre-emption Act a coparcener in a petty proprietary interest has the right of pre-emption Where a plaintiff is a co-sharer in the *khewat* in which the arazidari in dispute is situated he has a right of pre-emption (*Iqbal Ahmad J*) RAI v SURAJ KUMAR SINGH

180 I C 525 = 11 E *

1938 A W R (H C) 847 = A I R 1939 *

Ss 14 and 15—Scope—If exhaustive of modes of destroying right of pre-emption—Notice, if obligatory—Oral communication and refusal to purchase—If enough

Ss 14 and 15 of the Agra Pre-emption Act prescribe the procedure by which a vendor tend to a co-sharer's right of pre-emption exhaustive of all the modes open for destruction of right It is not obligatory on a vendor to give notice prescribed by S 14 It is open to a vendor to orally inform a co-sharer of his intention to purchase the property and exercise the right of pre-emption BHORA SINGH

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S 16—Manager's refusal to purchase property—If affects right of pre-emption of other members

Where the manager of a joint Hindu family refuses to purchase the property his refusal disentitles the other members to enforce the right of pre-emption His refusal to take the property in the exercise of the right of pre-emption is binding upon the family (*Iqbal Ahmad J*)

182

1939 A W R (H C) 254

S 15—Refusal to purchase property—Suit by any of the members—Maintainability

AGRA PRE EMPTION ACT (1922), S 20

The exercise of the right of pre-emption by the manager of a joint Hindu family must necessarily be on behalf of the members of the family Hence the refusal by the manager of a joint Hindu family to purchase certain property is binding on all the members of the

S 17—Actual price—Items of consideration

substitution for in a pre-emption substitution, to of sale consideration when as a matter of fact those items of consideration have changed hands Where one of the items of consideration for the sale is the payment and discharge of a mortgage debt incurred by the vendor in a suit on a mortgage containing an order for enforcement RAI v RAI 741 = 1939 A L J 935

S 17—Actual price—Onus

Where the circumstances attending a sale are such as to cast a doubt on the genuineness of the price as

Ss 19 and 20 (as amended)—Gift by vendee to

whom he is the manager and who happens to have a superior right of pre-emption to that of the plaintiff, but the deed of gift does not mention any question of pre-emption having been raised or the transfer being in

Ss 20 and 22—Defence based on S 20—If open

Pre-emption Act is of a suit brought by *Sharma and Verma, JJ*

ASHAD

1939 A L J 148 =

1939 A L J 344 =

A I R 1939 All 380

S 20—Gift by manager of joint Hindu family to co-vendee to avoid decree for pre-emption—If a benefit to the estate—Co-vendee, if acquires indefeasible interest—Suit for pre-emption if can be

Where the manager of a joint Hindu family who was

AGRA TENANCY ACT (1901)

cannot be as provided by S. 20 of the Agra Pre-emption Act. (*Rennot and Verma, J.J.*) MOHIB ALI KHAN v. BALDEO PRASHAD I.L.R. (1939) AIL 305=

183 I.C. 572=12 R.A. 148=
1939 A.W.R. (H.C.) 157=1939 A.L.J. 314=
AIR 1939 All 380

AGRA TENANCY ACT (II OF 1901)—*Super-imposition of a different tenure on a tenant—Effect—If amounts to merger*

When a tenure different in character from the one which was enjoyed is super-imposed on a tenant then under the old Act there was no question of merger but of suspension or keeping the right in abeyance. Hence where a person entered as a non-occupancy tenant just before the Act of 1926 came into force, takes on a *sar-e-peishgi* lease there is no question of merger and on the determination of the *sar-e-peishgi* lease the right which had remained dormant, namely that of a non-occupancy tenant revised under the new Act. (*Marsh, S.M. & Mehta, J.M.*) JAI KISHUN DAS v. TULSI RAM. 1939 E.D. 538=1939 A.W.R. (B.R.) 20

—III OF 1926)—*Licensee, if recognized under the Act—Entry as sub-tenant bil-e-wasood—Status tenant—Entry of word "Marfat"—Meaning*

Licensee is nowhere defined in the Agra Tenancy Act. That word so far as the cultivator is concerned, is not a term with which the Revenue law has anything to do. A person whose name is entered as sub-tenant *bil-e-wasood* is as a matter of fact a sub-tenant (*i.e.*) a non-occupancy tenant. Such a person, is treated as a sub-tenant, which he is, and not as a licensee, unless there is a document to show that the holding has been hypothecated as a security. If the recorded tenant has put any person in cultivating possession on his behalf except as usufructuary mortgagee or the cultivator will be shown the *khasra* with the word *Me* the licence can be withdrawn at the sweet will of the recorded tenant. (*Mehta, J.M.*) HARI NATH SINGH v. SATVADEO SINGH.

S. 3 (6)—*Tenant—G*

conclusion that it cannot be put to any other use considering the *total ensemble*, then the grove has maintained its grove character. It is not the number of trees that would matter but it is their location that would go to indicate whether the land can be put to any other use.

AGRA TENANCY ACT (1926), S. 13.

(*Marsh, S.M. and Mehta, J.M.*) MANOHAR DAS v. SYED KAZIM HUSAIN 1939 E.D. 326.

—Ss 7 and 17—*Sir land—Granting of occupancy rights and transferring of possession—Subsequent sale of proprietary rights—Claim to ex-proprietary rights on the ground of the invalidity of the grant of occupancy rights*

Where a person confers occupancy rights on another in respect of his own *Sir* land and transfers possession to him and requests by an application that his *Sir* rights be expunged from the *khatauni* and his request is granted, he cannot alter the sale of the proprietary rights turn round and claim ex-proprietary rights when it is found for some reason that the conferment of the occupancy rights is invalid. (*Darling, S.M.*) HANS RAM v. GAINDA LAL 1939 E.D. 43=

1939 A.W.R. (B.R.) 131

the three tenants enter into a new contract as regards the rent, the third one cannot be allowed to come forward and impugn the transaction and seek a declaration under S. 123 of Act. (*Mehta, J.M.*) MUNESHWAR v. OUDH NARAIN DHAR DUEE. 1939 E.D. 247= 1939 A.W.R. (B.R.) 215

—S 13—*Break of one year in possession—If bars claim to benefit of the section.*

Where there is a definite break in cultivation for one year as the tenant was out of possession for the full year the advantage of S. 13 of the Agra Tenancy Act

—S 13—*Fixed rate holding—Finding by settlement officer—Misdescription of a plot—Correction.*

show that the defendant was not a tenant but a trespasser, if can be corrected.

Act of 1901

show that the defendant was not a tenant but a trespasser and had kept the plot in his possession as a reality only a trespasser and not a tenant. (*Mehta, J.M.*) PASUPATI v. 1939 E.D. 326=

AGRA TENANCY ACT (1926) S 14.

SHANKER

1939 RD 132=
1939 A W R (B R) 159—S 14—*Ex proprietary rights—Accrual—How lost*

GAYA PRASAD

1939 A W R (B R) 10=
1939 RD 272=1939 A L J (Supp) 76—S 14—*Mandatory, character of—Effect—Rent agreed to privately*

In the face of the mandatory provisions of S the Tenancy Act any rent arrived at by private agreement regardless of the provisions of law is again rent fixed under S 36 of the Land Revenue Act. Relief cannot be granted on the basis of such rent (*Mehta J M*) NABIULLAH v LACHHMI PRASAD

1939 A W R (B R) 69 (1)=

—S 14 (1) — *Ex proprietary rent—If can include extra charge for sugar-cane cultivation*

Under the Agra Tenancy Act S 14 (1) the ex-proprietary tenant holds at a rent which is calculated on certain fixed rates. Unless they included provision for extra rent on the ground of sugar-cane cultivation ex proprietor cannot legally include such extra c (*Dennis and Verma, JJ*) PAULHARI BISHUNATH v RAMLAGAN JAIN

1939 RD 471=12 B A

1939 A L J 617=1939 RD 234=
1939 A W R (H O) 313=A I R 1939 All 500—S 16—*Occupancy rights—Determination as to—Implications behind Ss 14 to 17 of Tenancy Act of 1901—Ejectment or surrender and fresh admission—Tacking of former period of cultivation*

Ss 14 to 17 of the Tenancy Act of 1901 implied that if there is a surrender of land with implied agreement and with a year the tenant is admitted to some other

AGRA TENANCY ACT (1926), S 23

(Marsh, S M and Mehta, J M) MUMTAZ HUSAIN
v CHIDDA 1939 RD 526 (2)—S 17 (1) (d)—*Occupancy rights—Competency to confer—When should be present*

After occupancy rights contemplated by the Agra Tenancy Act must occupancy rights are conferred RAUF v ABDUL GHANI

1939 RD 323.

—*Statutory tenancy—When can*

arise—Tenant of Sui, subject of transfer—Status of—Absence of claim of ex-proprietary rights

According to S 19 of the Agra Tenancy Act, without can become a

face with the m before A transfer and in which ex proprietary rights are not claimed, cannot, for that very reason become the statutory tenant of the holding. He continues to be a non occupancy tenant and as such his ejectment will have to be sought under S 86 of the Tenancy Act (*Mehta, J M*) JAGROTTAM v. KAILAS SAHI 1939 RD 395

—S 20 (2), Proviso (1) (b)—*Proceedings if refers only to effective proceedings—Holding, mortgaged with possession—Landholder if in a position to*

holding has been mortgaged with possession the land lord is not in a position to take effective proceedings in assertion of his right till after redemption (*Mehta S M*) RAJESHWARI PRASAD SINGH v SARJOO SINGH 1939 A W R (B R) 26

—S 20 (2) Proviso (b)—*Heir to statutory tenant—Failure to eject within time allowed—Effect*

Law governing succession

According to the Tenancy Act, 1926, S 23 (1) the

daughter who died after the Tenancy Act of 1926 came into force (i.e.) in 1933 succession was held to be governed by personal law as it was not shown that the Tenancy Act of 1926 had modified the personal law in a case like that of the one before the Court and that it was not necessary for the claimants to show that they had shared in the cultivation with the last male owner

be deducted—Status of such tenants

Where seven years' leases are executed in favour of per

to confer on person who had not co shared—Consent of co-sharers—Necessity

A lambardar has no right to accept as an occupancy tenant a daughter's son when legally he could not possibly succeed to his maternal grandfather as he was too young to have co-shared in cultivation with him during his lifetime, without the consent of the co-sharers

AGRA TENANCY ACT (1926), S. 23.

(*Bennet and Verma, JJ*) HIR NARAIN SINGH v. NAND RAM. 1811 C 33-11 RA 514=

1939 R.D. 61=1939 A.W.R. (H.C.) 27=

1939 A.L.J. 193=1939 A.L.R. 1939 All 197

—S 23(2) (b)—Division of holding under S. 37—Death of one of the holders—Zamindar, if introduce new tenant under S. 23(2) (b)

When a holding which stood jointly in the name of two brothers is divided under S. 37 of the Tenancy Act, on the death of one of them his widow has a life interest and the other brother being a co-tenant is entitled as reversioner to his deceased brother's share in the tenancy. As long as the holding is not completely divided into two holdings the zamindar cannot introduce a new tenant under S. 23(2) (b) of the Act so as to defeat the rights of the survivor in the holding and against his wishes (*Mehta, J.M*) NAUJADI v. MUNESAR AHIR 1939 R.D. 218=1939 A.W.R. (B.R.) 256.

—Ss 21 and 44—Joint family—Entry of holding in the name of one of the members—Not treated as separate—Effect—Death of that member—Proof of co-sharing, if necessary, to resist ejectment

Where the members of a joint Hindu family live together and manage the communal affairs of the family, though a particular holding might be entered in the name of one of the members, so long as there is evidence that it was not treated as a severalty and there is evidence that it was treated as joint and that the family was also joint, the holding is practically a joint family holding. As such on the death of that member it is not necessary for the other members to prove co-sharing in cultivation with the deceased, in order to resist a suit for ejectment under S. 44 of the Act. (*Bomford, S.M. and Mehta, Offg S.M.*) PASHPAT PRATAP SINGH.

1939
—S 21—Re-marriage of estate, if ipso facto determined.

1938 R.D. 940=1939 A.W.R. (B.R.) 50(2)
—S 21—Right of collateral to succeed under—Conditions to be proved or fulfilled.

It is not necessary that the collateral who is claiming to succeed under S. 24 of the Tenancy Act should not have a separate holding from the deceased from whom he is claiming inheritance. It is not necessary that he should be staying with him all the time. There might be jointness in the beginning followed by cessor of commensality and later on, one of the members of the family becoming effete there may be a reunion, so that assistance would be available to the members of the joint family in a newly set up commensality. All that is necessary is that the collateral should have co-shared in the cultivation. (*Mehta, J.M*) RADHA KRISHNA v. GAYA DIN. 1939 A.W.R. (B.R.) 23=

1939 R.D. 408.

—S 27—Sub-lease in contravention of voidable.

A sub lease in contravention of the Tenancy Act is voidable and given to the tenant to enable him to eject the sub-lessee within the time to be fixed by Court. (*Marsh, S.M. and Mehta, J.M.*) JAMUNA MISKA v. JAI GOVIND RAM TEWARI. 1939 R.D. 638=

1939 A.W.R. (B.R.) 238.

—S. 27—Void sub-lease by one of the co-tenants—Others, if affected.

Y. D. 1939-2

AGRA TENANCY ACT (1926), S. 37.

The action of one of the co-tenants would bind the other co-tenants and hence it is up to the latter to see that he does not enter into void leases. When there is an illegal sub lease by one, it would entail an ejectment of all (*Marsh S. M. and Mehta, J. M*) KISHEN v. KANTA PRASAD. 1939 R.D. 309.

—S 29(1) and (4)—Occupancy tenant mortgaging and subletting his plots—Liability to ejectment

Where the occupancy tenant of a holding of 4 numbers has mortgaged with possession two plots and illegally sublet the other two, he deserved to be ejected (*Darling, S. M. and Mehta, J. M*) VINDHYACHAL RAI v. MAHOMED HUSAIN.

1939 A.W.R. (B.R.) 13=1939 R.D. 305.

—S 32(2)—Benefit of—When available—Usufructuary mortgage by occupancy tenant—No term fixed in mortgage—Surrender to landlord by representative of mortgagee

Where an occupancy tenant executes a usufructuary mortgage in which no term is fixed and later on the representatives of the occupancy tenant surrenders the holding to the zamindar and the mortgagee is sued under S. 44 for ejectment by the zamindar, he is entitled to the benefit of the provisions contained in S. 32(2) of the Agra Tenancy Act for the mortgage is a subsisting one and is in force and no question of the term or 'the remainder of the term of the mortgage' having expired can arise (*Bennet and Verma, JJ*) MAHARAJA OF

on a void deed concerned. The e to be ejected ide any period void transfer.

(*Mehta, S.M.*) KUBER UPADHYA v. GANGA PRASAD GIR. 1939 R.D. 34(2)= 1939 A.W.R. (B.R.) 144.

—S. 37—Division from part of a holding—If open.

A suit under S. 37 of the Agra Tenancy Act cannot be maintained for a division from part of a holding. (*Mehta, J. M.*) DULESARA v. RUPAN RAI.

1939 R.D. 23=1939 A.W.R. (B.R.) 120.

—S 37—Division of holding—Effect—Mortgage by co-tenant of his share after division—Liability to ejectment. See AGRA TENANCY ACT (1926), SS. 82 AND 37—LIABILITY TO EJECTMENT. 1939 R.D. 267.

—S. 37—Division of holding—Entry in village papers from 1272 onwards—Effect—Plea of withdrawal

—Onus—Facts to be proved

Where as early as from 1272 a person's name is

heavily on that co-tenant who alleges that the other co-tenant had withdrawn from that holding. He will have to show that some overt act was committed by which the co-tenant's right was denied and that 12 years have passed since that period. Else he cannot resist a suit under S. 37 of the Agra Tenancy Act for the benefit of the holding. (*Mehta, J. M.*) BHARAT SINGH

AGRA TENANCY ACT (1926), S. 37.

PATHAK HAR SAHAI

1939 R D 105=

placed solely on the settlement entry in 1308 in the name of the woman as an occupancy holding and where the previous entry shows that the holding belonged to the family of which the woman was a member and the subsequent entries bear out the view that it reverted to the family on her death a son of that woman could not resist a division of the held as the son of that woman descended to him (Harper, J M) E PRASAD.

1939 R D 177.

—Ss 37 and 44—Joint living and cultivation by brothers—One of them recorded as occupancy tenant—Disputes—Proper remedy of recorded occupancy tenant

Where the plaintiffs and defendants were the sons of the same father and mother and all lived jointly and cultivated jointly and one of them is recorded as occupancy tenant, his remedy in case of disputes, is under S. 37 of the Agra Tenancy Act and not by a suit under S. 44 against his brothers (Marsh, S.M. and Mehta, J M.) RAJA RAM v PANCHAM SINGH.

1939 R D 492=1939 A W R (B R) 217

—Ss 37 and 5 (14)—Suit under S. 37—Appeal—Limitation—Starting point—Analogy of preliminary and final decree, if applies.

In a suit under S. 37 of the Tenancy Act the final adjudication takes place only when the division is complete and limitation for appeal starts only from that date. The Agra Tenancy Act does not contemplate the

—S 40—Acquisition—Justification—Negating circumstances—Object of S. 40

Where the applicant lives in a different tahsil twenty

ing as enclaves, all other owned plots, remove the chess board pattern of the area and secure compactness (Bomford, S.M. and Mehta, J M) MANGAL v SURAT NARAIN PANDEY.

1939 R D 125=

1939 A W R (B R) 168

—S 40—Application under—Local inspection—Necessity

Where an applicant asks for acquisition of land in order to enable him to run compact and dated farms, the Collector should make a local inspection of the land. If the applicant has already the existing *khudkash* which he genuinely cultivates

AGRA TENANCY ACT (1926), S. 44.

—Ss 44 and 45—Acceptance of rent on behalf of Person paying rent, if can be

has been making payments on behalf of recorded tenants and they had plaintiff's agents and the usual such a defendant cannot be ejected under S. 44 of the Tenancy Act as a trespasser. But fresh rent can be assessed under S. 45. (Marsh, S.M. and Mehta, J M.) CHITESAR RAI v RAM RAN BIJAI PRASAD 1939 A W R (B R) 139=

1939 R D 472=1939 A L J. (Supp) 84.

—S 44—Admission to tenancy—Acceptance of rent—If would amount to—

been recorded as occupancy deceased person, though as a matter of fact they were not his heirs, the fact that the rent was accepted from such persons under the mistaken impression as to heirship, that cannot amount to an admission to tenancy. It is the person who claims to have been admitted as tenant that must prove that there was the intention to create a new contract of tenancy on the part of the landholder (Bomford, S.M. and Mehta, J M.) RAM CHARAN LAL v LALOO LAL 1939 R D 59=1939 A W R (B R) 155.

—S 44—Applicability—Ejectment of one co-sharer by another, as a trespasser—If possible—Proper remedy—Suit under S. 44—Duty of plaintiff to prove title.

One co sharer cannot get rid of another co-sharer by suing for his ejectment as a trespasser. In a case where a co sharer has taken possession of land and has been permitted to cultivate it for a number of years, the obvious inference is that he has been in occupation with the consent of the coparcenary body. As such the remedy of the other co sharers is to sue him for profits. As a suit under S. 44 of the Agra Tenancy Act can only

SAGWA.

1939 A W R (B R) 16

—Ss 44 and 99—Applicability—Forcible possession by co-sharer—Ejectment—Section applicable—

—S 44—Coparceners—One of them when can eject trespasser.

Where one of the coparceners by virtue of a mutual agreement among themselves, collects the rent of a particular land, he is the landholder thereof and as such as trespasser (Mehta, J. M.)

39 R D 439=

1939 A L J. (Supp) 90.

possession—Restoration to possession in respect of another decree—Status of tenant.

JHANSHAN.

1939 R D 528= 1939 A W R. (B R) 228.

AGRA TENANCY ACT (1926), S. 44.

Where a tenant has been once legally ejected under S. 79 of the Tenancy Act and the landlord has obtained possession, though thereafter he might have been formally restored to possession when he paid up the arrears when execution was taken in respect of another rent decree, yet the ejection as the result of the rent decree is binding on the tenant and he is only a trespasser (Alarak, S. M.) NANNEY v. UNUS AHMAD. 1939 A.W.R. (B.R.) 195.

—S. 44—Grant of patta by mortgagee—Subsequent purchase by creditor—Plea of fraudulent transfer—Test—Status of tenants.

Where a mortgagor in possession grants patta which purport to create occupancy rights but which do not conform to the requirements as laid down in S. 17 (1) (4) and (5) and the creditor purchases the property subsequently and seeks to eject the tenants on the ground of the lease being fraudulent, it is the conduct of the parties that would primarily go to decide the issue whether the document confers a statutory right or not. Whether it is an

ment or not. T. P. AC. the trans. sive ad the interval between the patta and sale was

PASSER. (MENA, S. M.) JUNDER LAL v. JUNDER 1939 A.W.R. (B.R.) 31.

—S. 44—Lease by mortgagee—Lessee, when protected from ejection.

When a lease by a mortgagee is found to be fraudulent, collusive or unreasonable, the Court hold that the admission of the lessee as such he cannot be ejected must be accepted as a tenant transferee after redemption. v. AMAN SINGH. 1939 A.W.R. (B.R.) 255.

—S. 44—Liability to ejection—Absence of any contract of tenancy—Plaintiff sole proprietor of khat to which the plots in dispute belong.

Where the plaintiff is the sole proprietor of the khat to which the plots in suit belong and of which the defendant a neighbouring zamindar is liable to ejection as a trespasser (Darling v. Mehta, J. M.) GANGA PRASAD SINGH v. GIKWAR SINGH. 1938 E.D. 937 = 1939 A.W.R. (B.R.) 58.

—S. 44—Liability to ejection—Acceptance of enhanced rent—Occupation for over 12 years—Estoppel.

Where enhanced rent is being taken from some persons treating them as tenants and have been in occupation for over 12 years under a void compromise, they are trespassers and ejected, for the zamindar's own conduct. (Darling, S. M.) KOMIL v. JAGESHWAR PRASAD 1939 A.W.

—S. 44—Suit under—Abatement—Plea of suit by successor in interest—If lies.

Where a suit under S. 44 of the Agra Tenancy Act abates owing to the death of the plaintiff, O. 22, R. 9, C. P. Code, bars a subsequent suit by the successor in

AGRA TENANCY ACT (1926), S. 44.

—S. 44—Suit under—Claim as mortgagee made with reference to a wrong plot—Liability to ejection.

Where owing to a clerical mistake, the tenant in a suit for ejection, pleads that he held one of the plots from the zamindar and the other as a mortgagee but gave the wrong numbers with reference to the plots, his

ACT, S. 31 AND AGRA TENANCY ACT, S. 31. 1939 E.D. 299.

—S. 44—Suit under—Maintainability—Plaintiff collecting rent and obtaining possession under S. 79—Ejection, if can be resisted.

In a suit under S. 44 of the Agra Tenancy Act by a person who has been collecting rent of the plots in question for over 25 years and who had also obtained possession under S. 79 of the Act, ejection cannot be resisted by the defendants on the ground that the plaintiff was the khat and that until definitely demarcated by a Revenue Courts the whole khat must be presumed to be joint and that as such the suit is not maintainable under S. 44 (Mena, S. M.) 3 D 397.

that no third party interests affected—Necessity for in suits under S. 44.

It is necessary to distinguish cases under S. 44 from those under S. 172. In cases under S. 44

it under—Plea of admission to tenancy

where a defendant in a suit for ejection under S. 44 of the Agra Tenancy Act sets up a plea of an admission to tenancy by the plaintiff, the onus is on him to prove the contract of tenancy. Where he has discharged it and the plaintiff did not care to go into the box and the only other evidence that of the patwari was negative in

—S. 44—Suit under—Proof of possession for over 12 years without payment of rent—Starting point for adverse possession—Onus.

When once the trespassers, in a suit under S. 44 of the Tenancy Act have shown that they are in possession

invoked—Rent, it can be placed in a suit under S. 44—Separate suit, when necessary.

The whole object of S. 192 of the Agra Tenancy Act is to avoid multiplicity of suits, and it could be invoked only where a defendant claims to hold the land as rent though a suit is under S. 44, if ration or rent it could be fixed in a defendant pleads that he is holding and that adverse possession has

AGRA TENANCY ACT (1926), S. 82.

—Ss 82 and 37—*Liability to ejectment—Mortgage by a co-tenant of his share after a division under S 37—Effect on the share of the other co-tenant.*

Division of a holding between two co-tenants under S 37 of the Agra Tenancy Act without getting the zamindar to agree does not result in the creation of two holdings and novation of the contract of tenancy. Where, after such a division, one of the co-tenants mort-

—S 82—Mortgagee of occupancy holding obtain possession through Civil Court—Liability for ejectment. See AGRA TENANCY ACT, SS 34 AND 82.

1939 B.D. 31 (2)

—S 82—*Proof of a case under—Necessary ingredients*

If the landholder produces copies of village papers to show that there has been transfer under a void lease, then all the ingredients necessary to prove the case under S. 82 of the Agra Tenancy Act are present. (*Marish, S. M. and Mehta, J. M.*) KISHEN v. KAMTA PRASAD.

1939 B.D. 309

—S 82—*Suit under—Maintainability—Sub-tenant ejected prior to institution of suit under S. 82—Cause of action, if exists*

Where a tenant had filed a suit under S 86 of the Tenancy Act against a sub-tenant, got him ejected and actually took possession all prior to the date of the institution of a suit against him under S 82 of

AGRA TENANCY ACT (1926), S. 99.

be revoked under S. 60 of the Easements Act. In such a case the proper thing would be to file a suit under S. 44 after giving the licensee the necessary notice and if he had stayed on, then under the strict wording of S 44, he would be a trespasser. But it is not possible to convert a suit under S. 86 to one under S. 44, though the contrary is possible. (*Mehta, J.M.*) HARI NATH SINGH v. SATYADEO SINGH 1939 B.D. 533=

1939 A.W.R. (B.R.) 233.

—S. 86—*Ejectment of re-recorded tenant—Effect on other members of the family.*

Where, on the death of a common ancestor, a surviving son is recorded as heir of a statutory tenant and he is ejected under S 86 of the Agra Tenancy Act, it is not the duty of the zamindar to look for other tenants who were members of a joint family and whose names had not been recorded in the papers. The members of the

—Ss. 86, 121 and 123—*Sit—Loss of Sir character—Absence of any claim for ex-proprietary rights—Portion of tenant—If can claim to be statutory tenant.*

A tenant of Sir which is the subject of transfer and in which ex proprietary rights are not claimed, cannot become for that very reason the statutory tenant of that holding. He continues to be a non-occupancy tenant and his ejectment will have to be sought under S. 86 of the

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selling is of the voidable variety, it led to a case of a mortgage which is (*Marish, S. M. and Mehta, J. M.*)

2. SHEO NATH BADHAI 1939 A.W.R. (B.R.) 112=

—S 86—*Defendant's possession found to be as mortgagee—Ejectment as sub-tenant—Validity.*

In a suit under S 86 of the Agra Tenancy Act against an alleged sub-tenant, in order to succeed, one must prove the contract of sub-tenancy. Where the defendant's possession has been found by a Civil Court to be that of a mortgagee he cannot be ejected as a sub-tenant (*Mehta, J. M.*) RAMESHWAR PRASAD v. KHEDAN KOERI 1939 A.W.R. (B.R.) 70=

1939 A.L.J. (Supp.) 65

—Ss 86 and 44—*Ejectment of licensee—Proper remedy—Suit under S. 86, if can be converted into one under S. 44*

Where a suit is brought under S. 86 of the Agra Tenancy Act, the person sued is treated as a non-occupancy tenant. It cannot be said in the same breath that such a person is a licensee, whose licence it is desired to

—S 99—*Applicability—Suit to eject co-sharer taking forcible possession of tenants holding. See AGRA TENANCY ACT, SS 44 AND 99—APPLICABILITY.*

1939 B.D. 202.

—Ss 99 and 44—*Ejected grove holder—Failure to avail remedy under S. 99—Retention of possession—Liability to ejectment under S. 44*

Where a grove holder alleges that his ejectment under S. 79 of the Tenancy Act and dispossession is illegal, has his remedy under S 99 of the Act and if he fails to avail himself of it within the period of limitation, he has no remedy left. Any attempt by him to retain possession over the plot subsequent to his ejectment gives the other party a right to eject him as trespasser under S. 44 of the Act. (*Marish S M.*) BORDHEE v. RAGHUBIR SINGH. 1939 B.D. 603 (1)=

1939 A.W.R. (B.R.) 273 (1)

AGRA TENANCY ACT (1926), S 99

—Ss 99 and 44—*Regaining possession after ejectment—Failure to avail remedy under S 99—Liability to ejectment under S 44*

Where after an ejectment under S 79 of the Agra Tenancy Act the tenant whose remedy even if he was of limitation, land, and if he 44 of the Act

(*Marsh S M*) *BOBDEE v RAGHUBIR SINGH*
1939 R D 602=1939 A W R (B R) 272

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claiming under him it is not necessary for its disposal to decide the exact status of the person claiming under the landholder. A decision even if given cannot operate as *res judicata* as between the co defendants in any later suit (*Mehta, J M*) *KAVASTHA PATSHALA ALLAHA BAD v MEWA LAL*
1939 R D 302=

1939 A W R (B R) 258
—Ss 99 121 and 230—*Suit for declaration by one tenant against a rival tenant—Addition of a prayer for possession—Jurisdiction of Revenue Court to try*

Where a suit is really one for a declaration by one tenant against a rival tenant that he is the tenant of the holding in dispute and possession of the holding is also sought the fact remains that the opposite party claims only a derivative title from the landlord and hence the suit lies exclusively within the jurisdiction of the Revenue Courts in view of the provisions of Ss 99 and 121 read with S 230 of the Agra Tenancy Act (*Mulla J*) *BHOLA OJHA v DHANESHWAR OJHA*
1939 A W R (H C) 459=1939 R D 386=

AIR 1939 All 677
—S 99—*Patta given to another during existence of tenancy in possession—If valid and enforceable*

As no patta can be given validly about a holding in which a tenant is already in existence a second patta to a different party is not susceptible of being enforced and hence there is no cause of action under S 99 of the Agra Tenancy Act in respect of it (*Mehta J M*) *KAMJAG v BAIDEHI* 1939 R D 122=1939 A W R (B R) 174

—Ss 99 and 44—*Widow of a co tenant obtaining division of holding—Subsequently re marrying the other co tenant—Latter in possession of whole holding—Rights and remedies of the mother of the deceased co tenant*

Where the widow of a co tenant obtains by suit a division of the holding but which is not consented to by the zamindar and later on re marries the other co tenant and he remains in undisputed possession of the whole holding he must be held to be claiming the whole

SINGH 1939 R D 935 (2)=1939 A W R (B R) 109

—S 103—*Relinquishment
Plea of fraud and absence of
Onus*

When an applicant for re through the elaborate procedure Revenue Court Manual and requirements of procedure, the onus lies very heavily on him to prove that a fraud had been played on him and that he did not want to relinquish the holding. (*Mehta,*

AGRA TENANCY ACT (1926) S 121

J M) *MAHADEO KALWAR v SYED MOHAMMAD RIZWAN ULLAH* 1939 A W R (B R) 97=1939 R D 375

—Ss 103 and 106—*Surrender—Renting—Proper remedy*

When a tenant feels that he has given a wrong surrender, then his remedy is not under S 106 of the Agra Tenancy Act which is the section under which the zamindar can come in to contest the surrender. While it is doubtful whether the order passed under S 103 is open to review, the tenant if he had given up, possession

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1939 R D 330

—S 105—*Surrender—Application—Forum—Presentation to S D O—Effect*

The proper person before whom the application is to be put under S 105 of the Agra Tenancy Act is the Tahsildar. Nowhere has it been provided that the S D O is the proper Court for the consideration of such an application. But if it is put in before him, he merely passes it on to the Tahsildar for necessary action. Unless the formalities contemplated by S 105 and the rules laid in the Revenue Manual are complied with, the proceedings are not complete (*Mehta, J M*) *JANHAWI PRASAD v JAWALA PRASAD*
1939 R D 225=1939 A W R (B R) 207

—Ss 105 and 247—*Order of Tahsildar under S. 105—Appealability*

An appeal does lie from an order passed by Tahsildar under S 105 of the Agra Tenancy Act for the Tahsildar in the eyes of the Revenue Courts is an Assistant Collector of the second class and under S 247 of the Act appeals are provided from all orders of the Assistant Collector second class (*Mehta J M*) *JANHAWI PRASAD v JAWALA PRASAD* 1939 R D 225=1939 A W R (B R) 207

—S 107—*Abandonment—What may constitute*

Per *Marsh S M*—Where a tenant has taken no interest in a holding for a period of five years for which he is entitled to sublet, he must be held to have abandoned the holding.

Per *Mehta, J M*—In each case facts would have to be scrutinised to find out if an inference in favour of abandonment can be warranted (*Marsh S M and Mehta J M*) *MAIKU v DURJAN*
1939 R D 605=1939 A W R (B R) 292

—Ss 121 to 123—*Scope and object of—Rent fixed in proceedings under S 35 of Land Revenue Act—Disregard of S 14 of Agra Tenancy Act—Remedy*

It is not the object of Ss 121 to 123 to declare what rent ought to be payable. The object of the sections is to

Tenancy Act for a declaration that the rent fixed in

In a declaratory suit under S 121 of the Agra Tenancy Act an order for delivery of possession could not be passed by any Court. Any such order and any

AGRA TENANCY ACT (1926), S. 121.

*such delivery of possession is wholly *ultra vires*, (*Darling, S. M.*) *URIJA P. GIRAND SINGH*

1938 E D 935 (2) = 1939 A.W.R. (B.R.) 59.

—Ss 121 and 123—Tenant of *Sir* subject to transfer—No claim for obtain a declaration that he
AGRA TENANCY ACT S:

—S. 123—*Declarati-
entry as joint tenant for et*

Where the plaintiffs have entered as tenants jointly with another branch and further where they live in another village, they have no right after such a long interval of time to get a declaration under S. 123 of the Tenancy Act. In such a case the last settlement entry must be taken as correct. (*Mekla, S. M.*) *JAGMOHAN SAITHWAR v. HANSAL*.

1939 A.W.R. (B.R.) 25 = 1939 E D. 519

—S. 123—*Scope—Power of Court under—Rent
out fixed—Remedy.*

S. 123 of the Agra Tenancy Act gives the landlord or the tenant the right to sue for arrears of rent payable when a dispute relating to the rent has been settled. Where the basis of a compromise is a dispute, the tenant is not entitled to seek abatement of rent. (*Mekla, J. M.*) *DEO SARAN RAI v. DWARIKA RAI*

1939 E D 27 = 1939 A.W.R. (B.R.) 170

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AGRA TENANCY ACT (1926), S. 140.

—S. 132—*Suit under—Maintainability—Rent
left unfixed in prior suit under Ss. 121/123—Proper
remedy.*

Where in a prior suit for declaration of rent under Ss. 121 and 123, the tenant has obtained a decree for a fixed rent, he is not entitled to bring a fresh suit for a declaration of rent.

lords to sue alone—Admission to tenancy by one only.

Where one of the landholders has succeeded in ejecting the exproprietary tenant without any interference from any one and the probabilities are that he alone admitted the tenant, then such a landholder can maintain the suit alone, under S. 132 of the Agra Tenancy Act. The fact that he joined with his brother in levying distraint on some fields which included fields other than

The facility of combining in one suit, a number of suits for arrears of rent against the same tenant is afforded to a plaintiff provided he sees to it that in his case the same facts are not repeated.

—S. 136—*Scope of—Decree for arrears of canal dues—Tenant, if can escape ejectment—Remedies open to decree holder.*

According to S. 136 of the Agra Tenancy Act, a tenant against whom a plaintiff has obtained a decree for arrears of canal dues, cannot escape ejectment, for the decree-holder has all the remedies open to a decree-holder for arrears of rent. The remedy against the defaulter is complete as under ordinary arrears of rent. (*Marik, S. M. and Mekla, J. M.*) *SHANKER v. DES-RAJ*, 1939 E D 238 (2) = 1939 A.W.R. (B.R.) 211.

—Ss 140 and 141—*Suit for ejectment—Plea of
S. 123—Rent not fixed—Suit for declaration of rent.*

AGRA TENANCY ACT (1926) S 186

—Ss 186 and 192 and Agra Pre-emption Act (XI of 1922) S 11—*Rent if When becomes a proprietor—Sale by—If right of pre-emption*

Though a rent free grantee might fulfil laid down by S 186 of the Tenancy Act proprietor only from the date of his declaration in a suit brought under S 192 and not at any time before. Where such a rent free grantee whose status had not been converted into that of a petty proprietor by reason of appropriate proceedings under the Tenancy Act effects a sale it is neither a sale of proprietary interest in land nor is the vendor a petty proprietor within the meaning of S 11 of the Agra Pre-emption Act and hence no suit for pre-emption lies in respect of such a sale. (*Iqbal Ahmad and Bajpai JJ*) RAM GHU LAM v RAM BHAJAN I L R (1939) All 282 = 181 IC 805 = 11 E A 612 = 1939 A W R (H C) 99 = 1939 R D 107 (2) = 1939 A L J 157 = A I R 1939 All 226

—S 188—*Suit to eject under—Grant subject to a condition against alienation—Ejectment when can be ordered*

Where a suit is brought under S 188 of Tenancy Act for the ejectment of a grantee alleged to be held under a service tenure on that the services were no longer required but the evidence showed that the grant was not an ordinary

that the condition had been broken the grantee was liable to ejectment (*Marsh, S M and Mehta J M*) JIVA RAM v MOONGA RAM 1939 R D 242 = 1939 A W R (B R) 216

—S 192—When could be invoked See AGRA TENANCY ACT SS 44 45 AND 192

1938 R D 914

—S 196—*Permission to re-plant—When necessary*

It is only when the grove as a unit loses its character as a grove and re-plantation is necessary that written permission of the zamindar is necessary under S 196 of the Agra Tenancy Act. But if it is mainly grove character no written permission is plantation of individual trees (*Marsh Mehta J M*) MANOHAR DAS v SYED KAZIM HUSAIN 1939 R D 326

—S 197—*Right to eject grove holder—Sale split*

AGRA TENANCY ACT (1926) S 226

who planted the grove on payment of rent while if the

He is not a non occupancy tenant holding from year to year whose lease has expired or will expire. As such he is not liable to ejectment under S 86 (*Bomford S M and Mehta J M*) BHAGWANT v GAURI GANESH 1939 R D 57 = 1939 A W R (B R) 133

—S 197 (b)—*Grove—Transferability—No prohibition in wajib ul arz—Consent of landlord on prior occasion—Effect of*

The Courts would not allow words to be introduced in the wajib ul arz which are not actually present. Where in the wajib ul arz of a village the right to transfer grove rights is not specially forbidden and where further such a transfer has been countenanced by the landlord in the past such rights could not be denied particularly after the passing of the Tenancy Act of 1926

Ben Boken
(Darling)

MAR v KAM
8 R D 916

—S 202—*Co-struction—Other dues if includes profits—Arrears of rent and other dues meaning of*

ing in the first part profits and the dues means arrears

arrear of profits
(*Collister J*) HAR DAVAL v RAM MANOHAR LAL 181 IC 484 = 11 E A 569 = 1939 R D 86 = 1939 A W R (H C) 72 (2) = A I R 1939 All 206

—S 202—*Effect of limitation on a suit under S 226 See AGRA TENANCY ACT SS 226 AND 202* 1939 A W R (H C) 72 (2)

—S 219—*Scope and applicability—Theka of 1901—Right of thekedar to remission—U P General Clauses Act S 6 (c)*

S 219 of the Agra Tenancy Act applies to all admit of any pre-empt and ses Act would apply to only those cases where a different intention does not appear in the new enactment. As such it cannot apply to the case of thekas though they may have been executed prior to the new Act and the thekedar

grove—*Liability to extinguish on land ceasing to be grove*

S 197 (A) of the Agra Tenancy Act merely states that a tenant planting a grove becomes a grove holder

laid down that in the case of a rented grove when the field is clear of trees the land will remain with the man

—Ss 226 and 229—*Assignee from co-sharer of profits—Profits on account of a year meaning of*

Where the profits on account of a year is assigned the expression means that the profits which accrue for that particular year irrespective of the collection is made is include arrears previous to the year in which the profits are stated to arise (*Bennet and Ismail JJ*) MAHOMED ISMAIL v HIRA LAL 181 IC 432 = 12 E A 135 =

AGRA TENANCY ACT (1926), S. 226.

1939 E.D. 236 = 1939 A.L.J. 353 =
1939 A.W.R. (H.C.) 321 = A.I.R. 1939 All. 419.
—Ss 226 and 202—*Limitation for suit for profits*

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Agra Ten
the lessor only in respect to arrears which had accrued
before the *theka* and to reduce it as against the *thekadar*
only in respect to arrears accruing during the period of
the *theka* that period is not reduced in favour of the
Lambardar L.S. 202 (Colister, J.) HAR DAYAL v.
RAM MANOHAR LAL 181 I.C. 481 = 11 E.A. 569 =
1939 E.D. 86 = 1939 A.W.R. (H.C.) 72 (2) =
A.I.R. 1939 All. 208

—S. 226—*Decree against collecting*
When can be passed.

When a suit is filed against a lambardar under
of the Agra Tenancy Act, a decree cannot
against the collecting co-sharer who is not a lambardar
unless the plaintiff has applied to amend his plaint to
add all co-sharers and the suit to proceed under S. 227
of the Act. *Marah S. M. and Mehta, J. M.* BABU
RAM S. KUNDAN SINGH 1939 E.D. 240 =
1939 A.W.R. (B.R.) 67 (2) =
1939 A.L.J. (Supp.) 63

—Ss 226 and 227—*Suit under—Maintainability*
Settlement proceeding for distribution of profits contrary
to the Tenancy Act—Rights—Agitation—
Forum

No action under S. 26 or 227 of the Agra Tenancy
Act will lie in a case where there is a settlement which
provides for a distribution of profits in a manner different
from that to which the co-sharers are entitled under
the Agra Tenancy Act, and the rights of part
such a settlement must be vindicated only in
Court. (*Them, C.J. and Gangra Nath, J.*)
KUEP v. RAM PEAREV. I.L.R. (1939) All. 694 =
183 I.C. 581 = 12 E.A. 152 =

1939 A.W.R. (H.C.) 456 = 1939 A.L.J. 428 =
1939 E.D. 382 = A.I.R. 1939 All. 442

—S. 227—*Collecting co-sharer—If entitled to retain*
his total share of profits

A collecting co-sharer is entitled to retain out of what

Pham, J. and Gangra Nath, J. M. MANI SINGH v.

S. 223 in which the liability

An appeal does lie to the
(1) (d) of the Agra Tenancy

1939 A.L.J. 489 = 1939 A.W.R. (H.C.) 433 =
1939 O.L.R. 427 = 1939 E.D. 367 =
A.I.R. 1939 All. 433 (F.R.).

—S. 242 (3) (a)—*Suit under S. 44 of Tenancy*
Act—Defendant pleading lease—Question of proprietary
right if in issue—Appeal from decision in suit—

Where in a suit under S. 44 of the Tenancy
was admitted that the plaintiff was a zamindar,
was contended by the defendant that he was a
proprietary rights, and the suit is dismissed, the

Y. D. 1939—3

AGRA TENANCY ACT (1926), S. 252.

lies to the commissioner and not to the District Judge,
for, as the lease is not a transfer of proprietary interest
in land under the Tenancy Act, there is no question of

A.I.R. 1939 All. 679.

—S. 242 (3) (b)—*Decision on a question of juris-*
isdiction—Decision on a concession by an Advocate—Right
of appeal.

Where a question of jurisdiction was raised and an
issue was also framed, but as it was conceded in argu-
ments, the finding on the issue was recorded as based on

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181 I.C. 852 = 11 E.A. 619 = 1939 E.D. 101 =
1939 A.W.R. (H.C.) 150 = 1939 A.L.J. 120 =
A.I.R. 1939 All. 210.

—S. 249—*Second appeal—Appellate order of*
Revenue Court in execution proceedings—If appealable.
No further appeal lies against an order passed in
appeal by a Revenue Court in execution proceedings.
(*Allsop, J.*) JANNAT-UN NISSA BEGAM v. PARSHADI.
1939 A.W.R. (H.C.) 793 = 1939 A.L.J. 1014.

—S. 251—*Review—Limitation—Ejectment order*
—Starting point.

The date of delivery of possession is the date from
which the period of limitation is to be counted for
an order of eject-
ment. (*J.M.*) JAMMI
A.W.R. (B.R.) 87 =
A.L.J. (Supp.) 77.

—S. 251—*Review of ejectment order—Holding*
sub let when possession delivered—Limitation—Starting
point.

Where after an order of ejectment possession had
been given to the landlord of a holding which was sub-let
at the time of the delivery of possession the order of
ejectment though the application
had been given,
ate of the knowledge of
(*Mehta, J. M.*) SHAM-

= 1939 E.D. 433.
order—Limitation

t—*Production of addi-*
—Deniability.

S. M. contra—Where
collector as to the non-

existence of a practice of payment of rent by the sub-
tenant to the mortgagee, it is a finding of fact and in
such a case it would be dangerous to allow the sub-
tenant to go before the Commissioner and fail to con-
vince him as to the existence of the practice and there-

AGRA TENANCY ACT (1926), S 252

—S 252—*Revision—Competency—Order under A*
13 of O 9 C P Code

No revision in

Act against a Co

C P Code refus

43, R 1 (d) clea

therefrom (Mc

RAGHUBIR NAF

—S 252—*Revision—Stay of suit for inadequate*
reasons—If a ground

Where a trial Court for grossly inadequate reasons

postpones a suit, the Board has wide powers under

S 252 of the

such an o

RAM LAL :

—S
by—*Absent*

Revision
Where there is no adequate service of a notice to

appear it constitu

plated by S 252,

the Board can

and pass such ord-

and Mehta J M) HARI RAJ v MANI AL JEN

1938 R D 929=1939 A W R (B R) 54

—S 264 and Sch II List 2, Serial 14—C P
Code, O 42, R 1 (All)

ALLUVION AND DILUVION

—Ss 271 and 242 (3)—*Claim of proprietary*
right—Procedure to be followed—Decision of issue by

as a clear claim of

f the Agra Tenancy

frame an issue and

port If instead of

appeal against his

decision lies to the District Judge only under S 242 (3)

as the question of proprietary right is still in issue in the

appeal Where the appeal is preferred to the Commis-

sioner, he has no jurisdiction to hear it, and he has only

(Bom-

BABU

D 128

1884),

nd and

LAND

41 Bom L R 257

—S 4—And land Improvements Loans Act, S 4—

IMPROVE

2 M L J 23

OF 1874),

rest officer

A forest guard since he is not appointed by the Chief

Commissioner is not a forest officer (D R Norman)

JAS RAJ v EMPEROR 1939 A M L J 90

—S 9—Bye laws under—Bye-law V—Zemindar—

refers only to private sale

S 17 of the Ajmer Government Wards Regulation

which requires the sanction of the Chief Commissioner

to the sale of property by the Court of Wards obviously

refers to a private sale (D R Norman) BENI

PRASAD v SARFRAZ ALI 1939 A M L J 85

—S 22—Scope and applicability—Mortgage prior

BENI PRASAD v SARFRAZ

1939 A M L J 85

AJMER LAWS REGULATION (III OF 1877),

S 8—Right to pre-empt all the properties sold—Pre

emptor if can pick and choose only one

Where a pre-emptor had a right of pre-emption in

more than one of several properties sold he cannot pick

and choose and claim to pre-empt only one of them

HISTY v FAIEH

1939 A M L J 77

Accretion—Owner

tion—General rule

ALLUVION AND

4—ACCRETION

1939 A L J 708

at the main stream

boundary between

AMENDMENT

Hasan and Hamilton, JJ. PASHPAT PRATAP SINGH
UDAI BHAN PRATAP SINGH 183 I.C. 808 =
1939 O.A. 674 = 1939 O.L.R. 558 =
12 R.O. 62 = 1939 A.W.R. (C.C.) 153 =
1939 O.W.N. 803 = A.I.R. 1939 Oudh 263

AMENDMENT See PRACTICE—PLEADINGS

—Of decree See C.P. CODE, S. 151 AND 152.

—Of pleadings See C.P. CODE, O. 6, R. 17.

APPEAL See (1) C.P. CODE, O. 43, R. 1
(APPEALS FROM ORDERS)

(2) PRACTICE—APPEALS

(3) PRIVY COUNCIL APPEALS.

(4) SECOND APPEALS.

APPROBATE AND REPROBATE.

See (1) ESTOPPEL.

(2) EVIDENCE ACT, S. 115.

ARBITRATION AND AWARD See also (1)

ARBITRATION ACT

(IX OF 1899).

(2) C.P. CODE, SCH.

II.

(3) C.P. CODE, O. 32,

R. 7.

(4) C.

R. 1.

—Arbitrator—Position of
arbitrator—Distinction. See C.P.
PARA 16.

—Arbitrator—Powers of—
suit referred—Amendment of plaint.
in date—Power to allow—Previous refusal of amend-
ment by Court—Effect of

had refused such amendment on a previous occasion.
(*Harries, C.J. and Path A's. J.*) TEJPAL MARWARI
v. KEDARNATH HIMAT SINGHA
20 Pat L.T. 700 = 1939 P.W.N. 703 =
A.I.R. 1939 Pat. 597.

—Arbitrator or referee—Statement of Counsel ap-
pointing referee—Latter empowered to examine parties

—Character of referee, if altered thereby.

Where the Counsel's statement makes it clear that a
person is being appointed as a referee and that he is to
make a statement in Court, the fact that he was allowed
to make the statement after taking the statements of the
parties, could not have the legal effect of altering the
character of the referee, for it cannot be said that a

—Award—Misconduct of arbitrator—Error of
judgment—If amounts to

Where arbitrators have allotted through error of
judgment an asset of uncertain and fluctuating value
upon the basis of a gross over-valuation, to one branch
of the family instead of to all the branches according to
their respective shares, this does not amount to mis-
conduct within the meaning of the law of arbitration.

ARBITRATION AND AWARD.

(*See also, J.*) RAJ KUMAR v. SHIVA PRASAD,
184 I.O. 553 = A.I.R. 1939 Cal. 500.

—Party consenting and receiving benefits

to challenge afterwards. See HINDU

LAW—MAINTENANCE—WIDOW. 50 L.W. 195.

—Award—If contract or content decree.

An award is not a contract inasmuch as the parties
to it do not contract with the arbitrator; and it is also
different from a consent decree where the order of the
Court is imposed upon the agreement of the parties.
(*Davis, J.C. and Tyabji, J.*) TARA CHAND KHIMAN-
DAS v. DYED ABDUL RAZAK SHAH.
I.L.R. (1939) Kar 422 = 182 I.O. 226 = 12 E.S. 4 =
A.I.R. 1939 Sind 125.

—Award—Validity—Minor's share in property
referred to arbitration—Decision about its partition—If
outside reference

Where what is referred to arbitration is only the
share of a minor in a certain property, the decision of
the arbitrators about its disposal or partition is outside
the scope of the reference and is, therefore, void. (*Dalip*
Singh, J.) SARASWATI DEVI v. JAGANNATH.

41 P.L.R. 201 = A.I.R. 1939 Lah. 308.

—Award—Validity—Partnership accounts—No
valid reference on behalf of one partner.

The principle that in a pending suit all parties must
be parties to the reference does not apply to arbitration.

the partners have joined in the reference but it subse-

quently the reference was set aside.

—Award—Validity—Partnership—Disputes refer-
red to arbitration—One partner subsequently dying—
Proceedings conducted without his legal representa-
tives

The terms of an agreement of partnership expressly
provided that upon the death of a partner his rights
should vest in his legal representatives. Upon disputes as
to accounts having arisen between the groups of partners
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ARBITRATION ACT (IX OF 1899) S 4—Submission—*Rules of Merchants Association requiring members to submit differences inter se to arbitration—Written undertaking to abide by rules signed by members—If written agreement to submit*

The words of the definition of 'submission' in S 4 of the Arbitration Act are sufficiently wide to include cases where the agreement is made without at the time it is made there being any differences between the parties either in existence or in direct contemplation. Also it is not necessary to constitute a 'submission' that the terms of the agreement should all be contained in one document. Such an agreement may be found in correspondence consisting of a number of letters. The printed rules of Merchants' Association requiring all members in all cases of dispute or differences *inter se* arising from certain transactions to submit the said disputes or differences to arbitration together with the written undertaking to abide by the rules, signed by members at the time of their admission as members are sufficient to constitute the written agreement to submit required by S 4 (*Wellon J*)
KOTUVAL IOKARDAS v ADAM HAJI

11 E (1939) Rar 769 = A I R 1939 Sind 357.

—S 8 (1) (b)—*Construction—Parties jointly appointing two arbitrators—One of them dying—Court's power to supply vacancy*

It is an ordinary canon of construction that a section of a statute should be so construed as to render every part thereof consistent with every other part. S 8 must be read as a whole and cl (b) of sub-S (1) must be read as qualified by sub S (2). It is consistent with the language of entire section to construe cl (b) as covering the case of a vacancy where the submission provides for reference to a single arbitrator and any other construction would render cl (b) of sub S (1) inconsistent with the words of sub S (2). Hence where the parties have jointly appointed two arbitrators and one of the arbitrators dies or a vacancy otherwise occurs the Court has no power under S 8 (1) (b) to

BANKER AND CUSTOMER

and if the arbitration clause in the contract of the office could not be incorporated by implication because the contract between A and M actually contained a separate arbitration clause and hence the appointment of another arbitrator by K on behalf of M was in contravention of the provisions of S 9, Arbitration Act, and hence illegal (*Lobo J*)
KISHINGHARD SANTRAN v ROCHALDAS 180 I O 143 = 11 E S 170 = A I R 1939 Sind 24

—S 15—*Execution of award—Right of holder after transfer of his rights thereunder—C P Code, O 21, R 15*

Though an award filed in Court is not a decree it is given the same status as a decree for the purpose of enforcement, with the result that all the provisions of the C P Code applicable to execution apply to such award. Therefore the holder of an award is entitled to execute the award, although he may have transferred his rights under it to a transferee unless and until such transferee comes to the Court and applies under O 21, R 16 C P Code (*McNair J*)
ANATH NATH v MONMO. THA NATH 181 I C 652 = A I R 1939 Cal 482
ASSAM LOCAL SELF GOVERNMENT ACT, S 93 A—*Realisation of dues by Local Board—Remedy by suit—Availability*

A Local Board is not precluded from realizing its dues by instituting a civil suit if it prefers to adopt that method although such dues might be recovered as an arrear of land revenue under the provisions of S 93-A of the Assam Local Self Government Act (*Edgley, J*)
RAGHUBIR SINGH v TAZPUR LOCAL BOARD

1 I R (1939) 1 Cal 329 = 43 C W N 408 =

A I R 1939 Cal 587
ATTACHMENT See also C P CODE, S 60 O 21, RR 46 AND 63 AND O 38 R 7

—*Effect—If creates an equitable or judicial lien*
An attachment does not create a charge. It only prevents an alienation and does not confer any title. Hence

A I R 1939 Pat 81

—**Art 183—Applicability—Person d under two Municipalities**
It does not in terms apply to the person

—S 9—*Scope—Appointment S 9—Legality*

K and M entered into goods on terms at office. The contract contained an arbitration clause of whatever nature unless amicably settled should be referred to two arbitrators, one to be nominated by each under the provisions of the Act. Upon a dispute having arisen A for on his behalf and called up for him within three days. On 1 himself appointed an arbitrator on behalf of

service under it (*Tek Chand, J*)
MUNICIPAL COMMITTEE, HONAL v PIRVALAL

because whatever terms and conditions of the office were to be incorporated in the contract between K and M entitled on the Bank going into liquidation, to claim

BANKER AND CUSTOMER.

preferential payment in respect of the proceeds of cheques over other creditors of the Bank. But in the case of draft which a customer gets from the Bank, drawn on a branch of the Bank, on payment of cash therefor it is only a purchase of the draft, and there is no entrustment to the Bank of the amount for any specific purpose. The purchaser cannot therefore claim preferential payment in respect of the amount covered by the draft on the Bank going into liquidation. (*Venkataramana Rao, J.*) ALL-INDIA SPINNERS ASSOCIATION, TAMIL NAD BRANCH v. OFFICIAL LIQUIDATORS T. N. & Q. BANK, LTD. 1933 Comp. C. 279—1939 M.W.N. 1071

—*Deposit of amount in Bank by way of fixed deposit as security for overdraft and for opening overdraft accounts—Nature of transaction—Deposit—If trust money—Right to preferential payment in winding-up proceedings*

Where under an agreement between a customer and a Bank the former makes fixed deposits of amounts in the Bank for the purpose of enabling him to open overdraft accounts on the security of such fixed deposits, and to obtain accommodation by opening overdraft accounts, such deposits are *prima facie* governed by the ordinary law which regulates a banker and a customer. It does not constitute anything more than a relation of a debtor and creditor. No question of trust arises in such a case, it cannot be pretended that the amounts paid into the Bank by way of fixed deposits are moneys placed with the Bank for any specific purpose so as to clothe the Bank with the relationship of a trustee. The depositor cannot therefore claim payments of the amounts in full in preference to the ordinary creditors of the Bank in winding-up proceedings. (*Venkataramana Rao, J.*) NAYAR MODERN BANK, LTD. v. PALGHAT v. OFFICIAL LIQUIDATOR, T. N. & Q. BANK, LTD. 1939 M.W.N. 1174.

—*Failure to honour customer's cheque—Measure of damages.*

Where the Banker, being bound to honour his customer's cheque, has failed to do so, he will be liable in damages. If special damage naturally ensuing from the dishonour is proved, it will be properly taken into account in assessing the amount of damages. If the customer be a trader, the Court may properly award substantial damages, in the absence of proof of special damage, entitled to such damages, if the injury has sustained.

BAR COUNCILS ACT (1926).

the amount. (*Venkataramana Rao, J.*) NEW FIELD CO. v. OFFICIAL LIQUIDATOR, T. N. & Q. BANK, LTD. 1939 Comp. C. 281—1939 M.W.N. 1072.

—*Relationship—Customer directing Bank to apply deposit in particular manner when occasion arises—Effect of—Trust—If created—Bank going into liquidation—Claim by customer to preferential payment—Sustainability.*

According to the rule regulating the relationship between a banker and a customer who has deposited moneys in the Bank, the banker is a debtor, the customer is a creditor and the deposit is a loan to the Bank. The mere fact that the customer gives the Bank a mandate or a direction to apply the money to his credit in a particular manner would not clothe the Bank with a trust. Where a sum of money is paid to the general account of a customer with a direction that the amount must be applied in a particular manner when occasion arises, until the said sum of money is appropriated in the manner directed, no question of trust would arise. The matter would rest in a mere mandate. The Bank is not a trustee for the customer, and he cannot claim preferential payment over other creditors or customers if the Bank goes into liquidation, but can only rank as an ordinary creditor. (*Venkataramana Rao, J.*) DHARMABAL AMMAL v. OFFICIAL LIQUIDATOR, T. N. & Q. BANK, LTD. 1939 M.W.N. 1063—1939 Comp. C. 266.

—*Relationship—Trustee depositing trust moneys in Bank—Bank aware of moneys being trust money—Effect—If makes Bank a trustee—Company detaining employee's cash security fund in Bank earmarked as such—Bank—If trustee for company's employees.*

The fact that a depositor in a Bank is a trustee, and the money deposited is trust money does not affect the relation which the law creates between a bank and a customer, namely, the relation of debtor and creditor. The legal effect of a notice to the Bank that the money deposited is trust money is only to cast a duty on the Bank not to participate in a breach of trust by the trustee. Where a company, acting under S. 282 B of the Companies Act, deposits in a Scheduled Bank moneys deposited with it by its employees in pursuance of their contracts of service, asking the Bank to earmark the same as employee's cash security, the fact that the Bank receives and accepts the deposit with notice of the fact that the same are employee's cash security of the company, would not make moneys. The Bank the limitation of the powers of the company in regard to the moneys deposited.

—*Liquidation—Employees' provident fund—If part of assets of company or trust money. See COMPANIES ACT, SS. 229 AND 230 (1) 1938 M.W.N. 1332—A.I.R. 1939 Mad 352.*

BAR COUNCILS ACT (XXVIII OF 1926) See also LEGAL PRACTITIONER.

account but debited the charges for the transfer. The money was, however, never because on that very day the Bank suspended liquidation proceedings were started later on. The customer applied for payment of the amount in preference to the ordinary creditors of the Bank.

Held, that the money was received by the Bank in the capacity of a mere agent and was held apart by the Bank as property of the customer, and the customer was therefore entitled to preferential payment in respect of

for good
monies,
ELS SECU-
11 J. 209.

BAR COUNCILS ACT (1926), S 10

—S 10—Professional misconduct—Findings of Bar Tribunal—Acceptance by Court

The question whether a particular advocate has violated the recognized canon of professional etiquette is primarily a matter that concerns the Bar Council and consequently the High Court ordinarily will accept find

1939 A L J 957 (F B)

—S 10 (1)—Professional misconduct—Agreement with client to receive payment in event of success only—Propriety

For an advocate to enter into an agreement with his client to receive nothing unless the suit was successful amounts to professional misconduct, and the Court is bound to take serious notice of it (*Law C J, Gentle and Somayya J J*) RAMANUJACHARIAR *In re* 181 I O 606—(1939) M W N 766 = 50 L W 231—A I R 1939 Mad 772 = (1939) 2 M L J 320 (F B)

—S 15—Rules framed in der—Rule prohibiting trade or business—Investments by way of money lending—If amounts to engagement in money lending business

Investment of his savings by an advocate do not

call for no escape from the conclusion that such investments constitute engagement in money lending business. It depends on the facts of each case and is a mixed question of fact and law, as to whether certain transactions amount to a money lending business (*Iqbal Ahmad Rachhpal Singh and Hunter J J*) AN ADVOCATE OF RANIKHET, *In the matter of* 1939 A W R (H C) 828 =

BENAMI—Essentials to be proved

Before any transaction can be must be clearly shown that it is benefit of the alleged benamidar, for the protection of the real owner (*Davis J C and KHATUN v SECRETARY OF*

I L R (1939) K.

11 R S 121—A I R 1939 Sind 9

—Evidence—Non production of draft of document—If material

—Inference—Purchase by father in son's name—Doctrine of advancement—If applicable

In England if the conveyance or transfer is made not to a stranger but to the wife or child of the person who provided the consideration if the transaction is wholly unexplained the law presumes an intent benefit the wife or child. In India no such exists. Hence where property is purchased by in the name of the son and the latter claims

BENGAL ACTS AND REGULATIONS

—Inference of—Purchase by father in son's name—Mutation and grant of receipts in son's name—Presumption of gift—If arises

Where a father has purchased property in the name of his son the fact that he has obtained mutation of names and granted receipts in the name of the son does not establish gift by him in favour of the son as such acts are consistent with the transaction being a purely one. Indeed such acts inevitably follow a transaction. Experience has shown that frequently benami transactions are entered into in this country for no apparent reason (*Harris, C J and Chatterji J*) SAHDEO KARAN SINGH v USMAN ALI KHAN 184 I O 113 = 6 B R 14 = 12 R P 225 = 20 Pat L T 787 = A I R 1939 Pat 462

—Right to sue—Benami purchaser at revenue sale—Right of creditor of real owner See BENGAL LAND REVENUE SALES ACT S 36

178 I O 357 = 5 B R 91

—Suit by benamidar—Dismissal—Appeal by real owner—Permissibility See C P CODE S 146

50 L W 429

—Right to sue—Benami purchaser at revenue sale—Right to sue for possession—Bengal Land Revenue Sales Act S 37

A benamidar is a trustee for the beneficial owner. As maintain in his own right that he had before the real owner the claim of the the aforesaid principle at a revenue sale.

ZEMINDARY CO LTD

41 C W N 38 = 70 C L J 218

diction of the trial Court but of the appellate Court as well. Where a suit for accounts was valued at Rs 130 but the trial Court decreed the suit for Rs 7,000 and the appeal was allowed and not to the Agra and Assam and Ismail J J)

19 11 R A 628 =

939 A L J 133 =

A I R 1939 All 273

—S 37 (2)—Scope and meaning of What is meant by S 37 (2) of the Bengal Agra and Assam Civil Courts Act is that where the statute law deals with a subject and allows certain rights equity

1938 A L J 1199 = 1939 A W R (H C) 43 =

A I R 1939 All 141

BENGAL ACTS AND REGULATIONS

Agricultural Debtors Act (VII of 1936)

Alluvion and Diluvion Regulation (XI of 1825)

KHAN 181 I O 113 = 6 B R 14 = 12 R P 225 = 20 Pat L T 787 = A I R 1939 Pat 462

BENGAL ACTS AND REGULATIONS.

Cess Act (IX of 1890).
 Court of Wards Act (IX of 1879).
 Embankment Act (II of 1882).
 Excise Act (V of 1919).
 Food Adulteration Act (VI of 1919).

OR 1890-1

Local Self-Government Act (III of 1885)
 Money-Lenders Act VII of 1933).
 Municipal Act (III of 1884)
 Municipal Act (XV of 1932)
 Public Demands Recovery Act (III of 1913)
 Regulation XXVI of 1793 (Sair)
 Revenue Recovery Act (I of 1890)
 Sanitary Drainage Act (VIII of 1895)
 Suppression of Immoral Traffic Act (VI of 1933)
 Tenancy Act (VIII of 1885)
 Village Chaukidari Act (VI of 1870)
 Village Self Government Act (V of 1919).
 Wakf Act (XIII of 1934)

BENGAL AGRICULTURAL DEBTORS' ACT (VII OF 1936) S 1 (3)—Effect of.

Per *Derbyshire, C. J., Lord Williams and Mitter, J.J.*
 The Act extends to the whole of Bengal. The provision in S 1 (3) that it shall come into force in such areas as the Local Government may by notification direct means that it shall come into force so far as concerns the establishment of Debt Settlement Boards in the local areas as provided in S 3 and all matters arising under the provisions of the Act consequent upon such establishment. Once these Boards are set up, the Act has come into force in those areas by reason of sub S (2), and its provisions apply to the whole of Bengal. 41 C.W.N. 1363, Disapp. (*Derbyshire, C. J., Lord Williams, Bartley, Nasim Ali and Mitter, J.J.*) NARSINGHDAS TANSUKDAS v. CHOGEFNULL

L.L.E. (1939) 2 Cal 93 = 183 I.C. 113 = 12 B.C. 129
 = 2 Fed L.J. 71 = 43 C.

—S. 2 (8)—“Debt”
 under decree of High C
 BENGAL AGRICULTURAL

—S 2 (8) (1)—“Cor
 of defendant in accounts suit
 The liability of a defendant in an accounts suit is

question must depend upon some prior occurrence condition. The liability of the defendant may possibly be unascertained, but, if it exists at all, it is a present liability which does not in any way depend upon the happening of any other event or the fulfilment of any other condition. (*Edgley, J.*) RAVATI MOHAN ROY v. BHICHAND BHUIAN.

43 C.W.N. 497 =
 A.I.R. 1933 Cal. 313
 —S. 9 (2)—Applicants before Board jointly
 liable for debt along with others—Right of latter to

BENG. AGR. DEBTORS' ACT (1936), S. 34.

creditor can realise his dues from the other debtors. But the right of contribution of the other debtors from the applicants is limited to such amount as is determined by the Board (*S. K. Ghose and Mukherjee, J.J.*)
 ABU TAHER HAZULAL KASHID v. CHANDRA MONI SAHA.
 43 O.W.N. 318.

—Ss 18 and 20—Distinction between—Scope of enquiry before Board.

(III)
 Per *Mukherjee, J.*—The enquiry by the Board contemplated by S. 18 (1) of the Bengal Agricultural Debtors' Act is not one as to whether the liability amounts to a debt at all within the meaning of the Act but whether a debt as defined by the Act and which is alleged by the party to exist, exists as a fact; and if so, what is its amount. There is a marked difference in the language which exists between Ss. 18 and 20 of the Act. Under S. 20 if any question arises before the Board as to

—S. 20—Purchaser of equity of redemption against whom decree was passed—If a “debtor.”

A purchaser of the equity of redemption who was made a party to the mortgage suit and against whom the usual mortgage decree was passed is not a “debtor”

—S. 34—Applicability—Decree of High Court transferred to Munsif for execution—Notice to Munsif for stay—Legality.

The definition of “debt” in S. 2 (8) of the Bengal Agricultural Debtors' Act does not include one payable under a decree of the High Court exercising its original jurisdiction. S. 34 of

—S. 31—“Civil Court”—If includes High Court, The words “Civil Court” in the Act do not include

—S 34—Notice to High Court—Decree passed on Original Side—High Court, if bound to stay execution—“Civil Court”—Meaning of.

Per *Curiam*.—On receipt of a notice under S 34 of the Bengal Agricultural Debtors' Act, the High Court is not bound to stay execution of a decree passed by itself in its ordinary original civil jurisdiction.

Per *Derbyshire, C. J., Bartley and Nasim Ali, J.J.*—The words “Civil Court” in the Bengal Agricultural

—S. 32—The Bengal Agricultural
 Act, Ss. 32 to 36 thereof should
 apply to the High Court in
 But the Act, so far as it par-
 ticular, is beyond the powers of

BENGAL EXCISE ACT (1910), S. 64.

case is tried (*Bartley and Rau, JJ.*) EZEKIEL
EPHRAIM v. EMPEROR ILR (1939) 1 Cal. 549 =
181 IC 955 = 11 Cr L 875 = 40 Cr L J 608 =
43 C W N, 522 = A I R 1939 Cal 346
— S 64 (1) — Order of confessions — Omission to
give not to interested parties — Effect of.

The omission to give notice to interested parties before an order of confiscation is made under S. 64 (1) of the Bengal Excise Act, might in ordinary circum-

181 I C 955=11 E C 875=40 Cr L J. 608=
43 C W N 522=A I R. 1939 Cal 346

BENGAL FOOD ADULTERATION ACT (VI OF 1919s), S. 4 and 6—Mustard oil—Saponification value found excessive—Presumption under S. 4—Rebuttal—Proof required.

In the case of mustard oil, if the analyst finds that the saponification value is excessive, the presumption

is rebutted. An accused person cannot be tied down to any particular method of rebutting the presumption raised against him under S 4 of the Bengal Food Act. In the case of mustard oil, the presumption by following the oil from throughout the process of manufacture arrival in his shop and demonstrate that the substance had been introduced. The presumption is rebutted if the accused calls evidence which shows that the article in question is derived from mustard seeds. Mere proof that none of the common adulterants is present will not rebut the presumption. (*Henderson and Khundkar, JJ*) SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL v KSHITISH CHANDRA BANERJEE 184 I C 423 = 12 R C 229 =

43 C W N. 1030 = A I R 1939 Cal 667
BENGAL IRRIGATION ACT
 47, 59 and 63—*Right to sue for*
—Registered owner—Suit by
some one else—Maintainability
 Under the Bengal Irrigation

DEONANDAN PANDEY v RAM PIRITA RAI
181 IC 844-5 BR. 683=11 RP. 644=
19 Pat LT 897=AIR 1939 Pat 188

BENG. LAND REV. SALES ACT (1859). S. 14.

said that the relationship is not created by a written contract to which each have become a party. S. 81 of the Bengal Land Registration Act applies to such a case, and S. 78 of the Act is no bar to the plaintiff suing to recover rent on the ground of non-registration of the plaintiff's name (*James and Keuland, ff*) DEENANDAN PRASAD v. GIRDHAR 182 I.C. 863.

5 B R 839-12 R P 82-20 Pat L.T. 697-
1939 P.W.N 120-A I R 1939 Pat 272.
VUE SALES ACT (XI OF
e to proprietor under S. 94,
separate engagement by him
ste-If first days or latest

on the proprietor of a separate Estates Partition Act mentions that the revenue of such estate is payable in two *kists*, January and March and the proprietor does not enter into a separate engagement thereafter, the only possible interpretation of the notice is that the January and March *kists* are the *kist* days referred to under S 2 of Act XI of 1859, and not the latest days of payment under S. 3 of that Act. (*Menderson and Latifur Rahman, Jf.*) MANINDRA CHANDRA SEN *v.*

attachment by an order of a Civil Court can be sold by the Collector for arrears of revenue. If only a part or share of the estate is under attachment S 5 also applies.

from the entire estate. The accounts of the separate shares in respect of which separate accounts had been opened under S. 10 must accordingly be merged into one account, the credits and the revenue demands must be totalled up and the balance struck. If the balance so struck is a deficit one then and then only can the Collector sell the entire estate. If the collector without

are to sale,
with juris-
on the sale
there was
For the
re entire estate is in-
rges all the accounts
It is not necessary
close the separate
of the entire estate

the assignors of the defendants, and the defendants after taking assignment of the contract give notice to the plaintiffs stating that they were henceforth bound by the contract, actually making a tender of rent, it cannot be

account or residuary share in default, he would only acquire the right, title and interest of the defaulting sharer and would not acquire the said share free from all incumbrances. The opening words of S. 53 of the

BENG. LAND REV. SALES ACT (1859), S. 17

Act are an exception only to the provisions of S. 37 and not to those of S. 14 of the Act. Consequently, if at the time of the purchase a suit to enforce a charge on the share in default was pending against the defaulting sharer, the purchaser becomes a representative in interest of the judgment debtor and can, therefore, be rightly made a party to the execution proceedings so that execution may proceed against the share purchased by him (*Mitter and Khundkar, J.J.*) **BHIFAMAR SINGH NAHAR v. UNESH CHANDRA DAS BAHAMAN**

43 C W N. 803

—S. 17—*Applicability—Attachment under S. 97 of Cess Act—Sale of estate under attachment—Jurisdiction of Collector*

An attachment by the Collector under the provisions of S. 97 of the Cess Act would come within S. 17 of Act XI of 1859. S. 17 of Act XI of 1859 does not say that the Collector shall have no jurisdiction to sell during the subsistence of the attachment, but that he will have no jurisdiction to sell for arrears of revenue which had accrued whilst the estate was under attachment (*Mitter and Khundkar, J.J.*) **NATH ROY v.**

—S. 33—*Office of origin—It amounts to payment*

A.I.R. 1939 Pat. 76.

—S. 33—*Scope—No arrears of land revenue—Sale—Suit to set aside—If barred.*

Where a sale is held for arrears of land revenue in cases where there were no such arrears, a suit to set aside the sale is not barred under S. 33 (*Wort and Agarwala, J.J.*) **INDERJIT KAI v. BULAK CHAND**
179 I.C. 861=11 R.P. 420=5 B.E. 305=
1933 P.W.N. 265=20 Pat.L.T. 300=
A.I.R. 1939 Pat. 76

—S. 36—*Object of—Revenue sale during pendency of suit by mortgagee of the property—Purchase, benami for mortgagee—Suit by mortgagee after decree to declare sale fraudulent, if barred by S. 36.*

The object of S. 36 of the Bengal Land Revenue

BENG. LAND REV. SALES ACT (1859), S. 37.

of the Act could not be pleaded in bar of such a suit, for that section has no application at all to such a case (*Dharle and Rowland, J.M.*) **CHATRADHARI LAL v. BHAGWATI PRASHAD**
178 I.C. 357=5 B.E. 91=
1939 P.W.N. 46=A.I.R. 1939 Pat. 168

—S. 37—*Annulment of tenure—Tenure-holder claiming nishkar title—Proof required*

Where in a case in which it is sought to annul a tenure under S. 37 of Act XI of 1859 the tenure holder claims protection by reason of his *nishkar* title, the proof of long possession without payment of rent must be of a very definite and convincing nature such as would be sufficient to enable the Court to draw the inference that the *nishkar* grant in respect of the tenure had been made prior to the Permanent Settlement (*Eagley, J.*) **ASHA MOVI BASU v. BARANAGORE JUTE FACTORY CO., LTD.**

I.L.R. (1939) 2 Cal. 330.

—S. 37—*Annulment of tenure—Tenure held partly under touts purchased at sale and partly under other touts—Purchaser's right to recover possession.*

Where a tenure is held partly under the touts purchased

(*Edgley, J.*) **ASHA MOVI BASU v. BARANAGORE JUTE FACTORY CO., LTD.**

I.L.R. (1939) 2 Cal. 330

f. under tenure within estate

as to effect under tenant,

as to Land Revenue Sales Act,

entitled to effect all under-

entirely within his estate,

as to under tenant who holds

an under-tenure party within his estate and partly within other estates. (*Ghose and Bartley, J.J.*) **SM. ASHAMOYEE BASU v. BARANAGORE JUTE FACTORY CO., LTD.**

70 C.L.J. 34.

—S. 37—*Recovery of possession on basis of revenue sale—Suit for—Onus of proof.*

In a case in which the plaintiff is seeking to recover possession of property on the basis of a revenue sale, the initial onus lies on the plaintiff to show that the land lies within his regularly assessed estate or *mahal* and not merely that it lies within the ambit of his *zamindari*. If he discharges this initial onus, it would be for the defendant to prove that his case would fall within one of the exceptions to S. 37 of Act XI of 1859. (*Edgley, J.*) **ASHA MOVI BASU v. BARANAGORE JUTE FACTORY CO., LTD.** I.L.R. (1939) 2 Cal. 330.

f. of tenure in

Protection of

divided parcels of

tenure must be

proprietors of

Revenue Sales Act, and it is purchased in auction in the name of a third person *benami* for the mortgagee, and where after the passing of a preliminary decree in the mortgage suit, the purchaser obtains possession, it is open to the mortgagee decree-holder to institute a suit to declare that the revenue sale was fraudulent and void and inoperative as against his mortgage lien and S. 36

70 C.L.J. 218=44 C.W.N. 22,

—S. 37 Proviso—*Raiyat—Meaning of*
There being no definition of *raiya* in Act XI of 1859, it must be read in its ordinary sense of a cultivator. Where a wealthy inhabitant of a town who is in the business has not cultivated the land for purposes of cultivation, he is not a *raiya*.

BENG LAND REV SALES ACT (1859), S. 37

and is not therefore competent to invoke the Proviso to S. 37 in his favour even if fruits and flowers were grown on a portion of the land which is used as a garden house A I R. 1931 P C 314, Rel on (*Mukherjee and Latifur Rahman, JJ*) ASHAMOYI v. SARBATOSH SEN I L R. (1939) 2 Cal 236 = A I R. 1939 Cal 526

—S 37 (4)—'Lease'—Meaning of

The word 'lease' has been used in the ordinary sense of a tenancy and though a tenancy must be based upon a contract

of rent is

tenancy

frequently

definite and

being understood that the tenant would pay the amount of rent which is customary or which is

able If a man holds land under another

his consent either express or implied

liable to pay rent to the latter for the land

tenancy will be constituted, even if the amount of rent is not determined, and no rent is actually paid (*Mukherjee and Latifur Rahman, JJ*) ASHAMOYI v. SARBATOSH SEN I L R. (1939) 2 Cal 236 =

A I R. 1939 Cal 526

—S 40—Application not containing all particulars—Registration of tenure—Effect of

S 40 of Act XI of 1859 mentions the particulars which are to be given in an application for a

The applicant is to state

they are ascertainable"

tain all the particulars

Collector and Collector alone to ask him to fill up the gaps But if the Collector does in spite of defects in

his application register his tenure the tenure itself is protected The tenure holder cannot be ejected by the

purchaser at a revenue sale from any portion of the lands included in the tenure (*Mitter and Rau JJ*) KUMAR NARENDRA NATH ROY v. MIDNAPORE ZEMINDARI CO., LTD 70 C L J 218 = 44 C W N 38

—S 48—Scope—Registration of tenures—Validity of—Right of revenue purchaser to question

S 48 of Act XI of 1859 contemplates a suit between the grantor and persons claiming under him on the one

BENGAL MUNICIPAL ACT (1932), S. 15

application for registration of both these classes is the same, namely, three months but the starting point is different In respect of those created between the 4th May 1859 and the 21st April, 1862, the starting point is expressly stated to be from the 21st April, 1862 and in respect of other tenures created after 21st April, 1862, the starting point is to be the date of creation (*Mitter and Rau JJ*) KUMAR NARENDRA NATH ROY v. MIDNAPORE ZEMINDARI CO. LTD 70 C L J 218 = 44 C W N, 38.

SELF GOVERNMENT ACT and 75—Rights under control of District Board.

If Government Act merely trans- hitherto under the control of

BENGAL MONEY LENDERS ACT (VII OF 1933), S. 4—Applicability—Interest already paid

S 4 of the Bengal Money lenders Act only applies to arrears of interest It has nothing to do with interest that has already been paid (*Henderson J*) AUNAR ALI v. JEBAR MULLICK 182 I C 230 = 12 E C 22 = 43 C W N 495 = A I R. 1939 Cal 338.

—S 4—Applicability—Interest on money lent by

than the money lender in suit (*Henderson J*) AUNAR ALI v. JEBAR MULLICK 182 I C 230 = 12 E C 22 = 43 C W N, 495 = A I R. 1939 Cal 338.

—S 4—Applicability—Suits for redemption

The applicability of S 4 of the Bengal Money lenders Act to suits for redemption is open to argument The words 'unless it is satisfied that the money-lender had reasonable grounds for not enforcing his claim early'

the credit

AUNAR A 12 E C

BENGAL MUNICIPAL ACT (1932), S. 34

Unit—Person who place

of the Bengal

city, and any

to make a con-

nection with an

of voters of the

has taken place.

21 ALI HAIDER v. 939) 2 Cal 442 = 13 C W N 1063 = R 1939 Cal. 662.

14 days

of 14 days relates to offences committed in connection with an election, and the shorter period to other

ave

nd-

) = 62 lity

the the the

duly registered Such a purchaser can show that the Collector had no jurisdiction by reason of the breach of

BENGAL MUNICIPAL ACT (1932), S. 51.

plaint is in substantial compliance with the provisions of S. 15 of the Bengal Municipal Act. In any case, if the Court is inclined to be meticulous an amendment ought to be allowed. (*Biswas, J.*) MUNICIPAL COMMISSIONERS OF PABNA TOWN v. ANUKUL CHANDRA MOITRA 180 IC 673=11 RC 719=43 CWN 194=AIR 1939 Cal 79

—S 51—Remission of rates by chairman not authorised by Act—It binds municipality

S 51 of the Bengal Municipal Act merely authorises the chairman to exercise the powers vested in the Commissioners by the Act and will not obviously confer on him any delegated authority to act on behalf of the commissioners in respect of matters not authorised by the Act. If, therefore, the chairman allows a reduction or remission of rates without acting in conformity with the provisions of the Act, the Municipality cannot be bound by such act. (*Kinnas, J.*) MUNICIPAL COMMISSIONERS OF PABNA TOWN v. ANUKUL CHANDRA MOITRA 180 IC 673=11 RC 719=43 CWN 194=AIR 1939 Cal 79

—S 71—Offence under—If continuing offence—Date of offence—Proof—Duty of prosecution

Offence under S 71 is not a continuing offence. As soon as a sweeper withdraws from his service, the offence is complete and he does not go on committing it merely by working under some other municipal body. It is the business of the prosecution to establish on what date the offence under S 71 (2) is alleged to have been committed. (*Henderson and Latifur Rahman, JJ.*) BHAGIA CHITTAGONG MUNICIPALITY. 184 IC 585 (1)=AIR 1939 Cal 608

—S 295—Maintenance of meter in good condition—Duty of Municipality

Under S 295 of the Bengal Municipal Act, the duty of maintaining the meter in good order rests upon the Municipality and not on the owner or occupier of the house. It is true that under rules framed by Government which were adopted as bye laws by the Municipality, the entire costs of house connection including the expenses of a meter had to be borne by the owner or occupier of the house, but there is no rule or bye law that the costs of maintaining the meter in good order have to be met by the house owner and not by the Municipality. (*B. K. Mukherjee, J.*) SARAT CHANDRA GUHA v. KALIPADA RAY 180 IC 391=11 RC 682=68 CLJ 463=AIR 1939 Cal 254

—S 309 (d)—Non repair of meter—Power of Commissioner to cut off water

S 309, Cl. (d) of the Bengal Municipal Act does not empower the Commissioner to cut off water supply on the ground of any defect in or non-repair of the meter. (*B. K. Mukherjee, J.*) SARAT CHANDRA GUHA v. KALIPADA RAY 180 IC 391=11 RC 682=68 CLJ 463=AIR 1939 Cal 254

—S 535—Notice not mentioning all reliefs claimed in suit—If invalid.

The fact that a notice under S. 535 of the Bengal Municipal Act does not mention all the reliefs claimed in the suit, does not make it invalid. (*S. K. Ghose, J.*)

them certificate debtors

An order merely directing the addition as parties of certain persons, whose names were not specified in the order, nor added in the certificate, cannot make these persons certificate-debtors within the meaning of S. 3

BENG SANITARY DRAINAGE ACT (1895), S 23.

(1) and consequently their rights do not pass by the sale. (*Mukherjee and Roxburgh, JJ.*) BHARAT BANDHU v. RAHENDRA KUMAR 70 CLJ 370=AIR 1939 Cal 752

—Ss 7 and 21—Certificate-debtor, a lunatic—Notice served on him and not on his guardian—Validity of sale—Decree and certificate—Difference—Determination of lunacy—Order of Court if necessary.

The service of the notice under S. 7 of the Public Demands Recovery Act on the certificate debtor who is a lunatic, instead of on his guardian, does not make the sale void. There is an essential difference between a decree passed by a Court and a certificate. A decree cannot be made without proper service on the defendant and without some evidence. A certificate has the force of a decree when signed under S. 4 and filed under S. 7 of the Public Demands Recovery Act, no evidence has to be taken and no notice has to be served. Lunacy is determined not by an order of the Court but by recovery. (*Henderson, J.*) JOGESH CHANDRA BANERJEE v. DIGENDRA CHANDRA BANERJEE. 118 IC (1939) 1 Cal 517=183 IC 515=12 RC 163=43 CWN 1177=69 CLJ 374=AIR 1939 Cal 542

—S 36, proviso (a)—Suit to set aside sale—Limitation.

S 36, proviso (a) of the Public Demands Recovery Act lays down a rule of limitation, and a suit to set aside a sale instituted more than a year after the delivery of possession to the purchaser is, therefore, time barred. (*Henderson and Latifur Rahman, JJ.*) DHIRENDRA NATH BHATTACHARJEE v. CHARU CHANDRA MITTRA 43 CWN 849=70 CLJ J. 329, BENGAL REGULATION (XXVII of 1793), Art. 2—Scope—Consolidated amount payable by occupant of gola to landlord on grains, etc., stored by him on gola—If tax or duty prohibited by Regulation

A consolidated amount of dues payable by the occupant of a gola to the landlord on the sales of various articles there stored by him e.g., grains, tobacco, mustard oil and so on, must be held to be a tax or duty within the meaning of Art (2) of the Bengal Regulation of 1793; and the levy of same is prohibited. (*Hart, J.*) BIKAN MAHURI v. MT. BIBI WALIAN 183 IC 763=5 BR 983=12 RP 189=20 Pat L.T. 671=AIR 1939 Pat 633

[Note Reg. XXVII of 1793 repealed by Act XXIX of 1871.]

BENGAL REVENUE RECOVERY ACT (107 of 1890), S. 4 (2)—Applicability—Certificate in respect of amount due to public body or local authority—Proceedings in execution—Payment under protest—Suit to recover sum paid under protest—Forum—Jurisdiction.

Reading Ss 3 and 5 of the Bengal Revenue Recovery Act, it is clear that whether the amount payable is a certificate is recoverable as payable to the Collector or as payable to any public body or any local authority, the default must be proceedings referred to in S. 3 of the Act. That would bring the case directly within S. 4 of the Act, and S. 4 (2) becomes applicable. The recovery of the amount paid under protest on the

PRAASAD SINGH v. SECRETARY 182 I.O. 223=122 IC 734=123 IC 122=123 IC 122

BENGAL SANITARY DRAINAGE ACT (1895), S 23—Claim for sale—Limitation

BENGAL SUPPRESSION OF IMMORAL TRAFFIC ACT (1933) S 9

Under S 23 of the Bengal Sanitary Drainage Act of 1895 the right of the landlord to recover the drainage cess from the subordinate tenure holders accrues at the same time when he pays the amount determined by the Collector as payable by him under S 22 of the Act. The fact that the amount due from the tenure holders has not been fixed by the Government will not affect the limitation as regards the tenure holders and the landlord is entitled to a decree for cess only for a period of 4 years up to the date of the institution of the suit (*S K Ghose and Mukherjee JJ*) **JOGENDRA KRISHNA BANERJEE v ADMINISTRATOR GENERAL OF BENGAL** 70 CLJ 184

BENGAL SUPPRESSION OF IMMORAL TRAFFIC ACT (VI OF 1933) S 9—Intention—Nature of—Trial of offence—Duty of Judge.

The intention specified in S 9 is not necessarily an intention that the girl should become an inmate of an existing brothel. Where in a trial for an offence under S 9 Bengal Suppression of Immoral Traffic

BENGAL TENANCY ACT (VIII OF 1885), S 3

(3)—Landlord—Proprietor of resumed mahal with whom no entitlement has been made C D T A M Ss 26 F AND 3 (3)

S 12—Transfer of putni—liability for rent

A putnidar is not relieved of his liability to pay rent to the landlord by his transferring the putni to another when there is no proof that the transfer fee had been paid or that the transfer had been recognised by the landlord (*Henderson J*) **RAM DAS AULIA v BAZLEY KARIM FAZLEY MAULA** 70 CLJ 284

Ss 22 and 159—Landlord auction purchaser—Right to annul incumbrance

S 22(1) of the B T Act undoubtedly effects a merger of the rayati interest with the superior interest

right or becomes in under rayat is treated the disappearance of the under rayat a rayi and Roxburgh, JJ)

NATR

S 22(2)—Co sharer landlord purchasing occupancy holding—Status of—If a rayat—Transferee from such co sharer—Sub lessee from—Position of

The status of a co sharer landlord who has purchased an occupancy holding is not the status of a rayat but a peculiar status. His right is that of a proprietor entitled to retain possession of the land subject to payment to his co proprietors of the The status is a peculiar status co-sharer so long as he remains ceases to be a co sharer and his lost, then he has no right to ret

BENGAL TENANCY ACT (1885), S 26 F

land and it would pass on to the person who acquires the interest of that co sharer. The person who acquires such interest can sublet the same to another who thereupon becomes a rayat of the holding (*Rozland and Chatterji, JJ*) **SUKHDEO PANDEY v RAMESHWAR PRASAD** A I R 1933 Pat 522

S 22 (2)—Co-sharer landlord—Purchase of non transferable holding at money sale—Right of other co sharers to joint possession with purchaser

If a co sharer landlord purchases the interest of the tenant of a non transferable occupancy holding in a sale in execution of a money decree, the other co sharer landlords are not entitled to joint possession with the purchaser if the tenant has not abandoned the holding. (*Sen J*) **ABINASH CHANDRA ROY v MOHINI LAL** 101 43 C W N 379=A I R 1939 Cal 295

S 26 D (b)—Transferred holding liable to be assessed to rent but not so assessed—Landlord's fee if payable

Under S 26 D (b) of the B T Act landlord's fee is payable if the transferred holding is liable to be assessed to money rent at some future date, even though such ment has never taken place before the date of the (*Edgley J*) **PROMODE KUMAR BAYER USUM KAMINI DASSIA** 43 C W N 217.

26 E (1)—Applicability—Decree in share of holding provision in sub S (1) of S 26 E applies to the decree for arrears of rent due in respect of the holding. The reason behind the exception in the

case of such a decree appears to be that the decree holder of such a decree is the landlord himself and there is no necessity to serve notice upon him or to pay the

son JJ) ATUL CHANDRA v MOHINI MOHAN 182 IC 751=12 RC 102=A I R 1939 Cal 28

S 26 F—Application under old section after amendment—Maintainability—Transfer before amendment

An application for pre-emption filed under the old S 26 F of the B T Act after the Amendment Act of 1938 by which it was amended has come into operation, is not entertainable although the transfer took place before the amendment (*Nizam Ali and Rau, JJ*) **PRAFULLA CHANDRA v RAJ MOHAN DAS** 43 C W N 1172

S 26 F—Application under—Question if applicant to entertain of the B T Act retain the question The mere fact that notice as landlord relieves which may section (*Sen J*) JAGAT KISHORE 43 C W N 274

S 26 F—Order for pre-emption—Validity—Power of third persons to question—Holding sold to minor—Minor not represented in pre-emption proceeding

The proceeding by which the landlord exercises his right of pre-emption under S 26 F of the B T Act cannot be challenged as void by third persons on the ground that the occupancy holding, presented in such re-emption passed of the landlord to

BENGAL TENANCY ACT (1885), S. 26-F.

pre-emption does not depend upon any decision by the Court. It flows automatically from the transfer itself and no duty is cast upon the landlord to give any notice to the purchaser. Where the purchaser describes himself in the *Achala* as a major, the Court can only serve the notice in accordance with its terms. (*Henderson*—

has no jurisdiction to allow pre-emption to the pre-empting landlords. (*Edgley, J.*) *BAS*

L. DURGANATH PAL I.L.R. (1939)

183 I.C. 489 = 12 E.C. 165 = 43

A.I.R. 1

—S. 26-F—Proceeding under—*Vt*

ary party
The question as to whether or not the vendor stands to contest an application for pre-emption under S. 26-F of the Bengal Tenancy Act entirely upon the circumstances of the case. The position adopted by the vendor is that there has been an effective transfer of his holding which the landlord is seeking to pre-empt. The vendor has executed a mortgage deed but has not transferred the holding. He had to transfer, the vendor is the application for pre-emption. The vendor has made a party to the order to contest the application. (*KUMAR v. DURGANATH*)

I.L.R. (1939)
12 E.C. 165 = 43 C.W.

—Ss 26-F and
emption—Proprietor
settlement has been made
empt

Where a mahal had been resumed under Regulation II of 1819 (on the ground that it was held under an invalid *lakera* grant), the proprietor of the resumed mahal with whom no settlement has been made by the Government, is not a landlord within the meaning of S. 3 (3) of the B.T. Act, and he has, therefore, no right to apply for pre-emption under S. 26-F of that Act. (*Sen, J.*) *BIRENDRA KUMAR ROY v. JAGAT KISHORE ACHARJYA*.

43 C.W.N. 274.

—S. 26-F—Two separate holdings sold by one deed—Pre-emption of one—Permissibility.

Under S. 26-F, B.T. Act, it is permissible for the

BENGAL TENANCY ACT (1885) S. 26 G.

to the application. (*Edgley, J.*) *RAKHAL CHANDRA DE v. LALIT MOHAN SAHA.* 43 C.W.N. 554.

—S. 26-F (4) (a)—Co-sharer landlord acquiring interest after transfer and application by some co-sharers under S. 26-F (1)—Right to join as co-applicant—Limitation

—S. 26-G (as amended)—Any other law for the

estoppel is not included within the words "any other

No appeal is competent from an order in a proceeding under S. 26-G of the Bengal Tenancy Act. (*Derby, J.*) *DIGAMBAR PONDA*
43 C.W.N. 1108 =
A.I.R. 1939 Cal 717.

order restoring possession is made. This has the effect of a decree of a Civil Court. An order can only be legally made in the case of a usufructuary mortgage. If in fact there is no such mortgage the order is without jurisdiction, and the High Court can interfere under S. 115, C. P. Code. (*Henderson, J.*) *KISHORI MOHAN v. MAJANNESSA.* 43 C.W.N. 1214 =

A.I.R. 1939 Cal 719.

—S. 26-G (6)—Order refusing application under sub S. (5)—Appeal.

The language used in the concluding portion of sub S. (6) of S. 26-G of the Bengal Tenancy Act is intended to provide that any order passed or the Revenue Officer with reference to the provisions mentioned in that subsection shall be a decree of a Civil Court. It is not necessary that such an order has been made against the tenant. (*GADADHAR*)

130 Cal 458.
possession to

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sion

BENGAL TENANCY ACT (1885), S 26 J

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GOHINDA PR
70 C L J 1=

—S 26 J—Application under — Limitation on—
Starting point—Limitation Act Art 181

The provisions of Art 181 of the Limitation Act apply to an application under S 26 J of the B T Act and limitation will run from the date on which the right to apply accrues. It is only when the steps contemplated by S 26 C (3) of the Act have been duly taken or at any rate when it is clear that the landlord has been informed that the transfer has taken place that it can be

BENGAL TENANCY ACT (1885) S 48 H

limits within which it varies may be ascertained. As to what the limits of variation should be will depend not merely on the extent of the actual variations but also on the number of cases which show such variations or the extent of the areas which may be involved. In areas to which S 31-A of the Act is not extended, it is a fair rule to adopt in order to ascertain the prevailing rate to consider whether or not it is the rate, or substantially the rate paid by the majority of the raiyats in the locality.

RA NATH v GOLEJANNESSA
43 C W N 93

id (d)—Under raiyat holding term—Liability to redemption in Cls (c) and (d) of S can a written lease which is for a term. It follows that an under raiyat holding under a

—S 26 J—Deed of transfer of registered before Amendment Act of for transfer fee filed by landlord after—Maintainability

Reading Cls (c) and (e) of S Clauses Act it will be seen that (Amendment) Act of 1938 can different intention appearing the

43 C W N 217

a term. It follows that an under raiyat holding under a

was registered before the Amendment Act came into force, an application filed by the landlord after that Act came into force for balance of transfer fee under S 26 J of the Bengal Tenancy Act is maintainable (Ghose J) RAJENDRA NATH v ASHALATA DEBI I L R. (1939) 2 Cal 348=43 C W N 948

—S 26 J—Order under—Extent of finality—Question of status of tenant—If res judicata in subsequent suit

An order for payment of transfer fees passed in a

of his status before that section became law (Edgley J) NARENDRA NATH v ALANGA SUNDARI

A I R 1939 Cal 754

—Ss 48 H and 174 (3)—Bemad's lease to under raiyat registered without payment of landlord's fee—Effect of—Rent sale of holding—Locus standi of under raiyat to set aside sale

A bemad's lease to an under raiyat, that is to say, a lease without any definite term specified in it and in which there is nothing to show that it is meant to be a

of the tenant, and the tenant is not precluded from out payment of landlord's fee and the under raiyat has

—S 26 J—Recovery of transfer fees—Proper

—S 48 H—Registration of under raiyats lease landlord's fee—Validity—Subse

and KONDIGI, J J A I R 1939 Cal 1016
LEQUE 43 C W N 1016

See also (V C Ghose J) SUNITA BALA DAS
GUPTA v PRODYOT KUMAR TAGORE

I L R (1938) 2 Cal 569=183 I O 239=
12 R C 151=43 C W N 248

under raiyati lease without pay- has no effect and the defect

of subsequent payment (Henderson, J) DEBENDRA CHANDRA DE v JAMINI KUMAR DEY

43 C W N 1209=A I R 1939 Cal 744

—S 48 H—Under raiyati lease infringing terms of section—Claim of landlord pre-emptor to khas possession—Under raiyat, if can resist—Right to refund

an under raiyati lease created tenant which infringes the B T Act is not entitled, or khas possession of the pre-emptor succeeds only to 1 tenant he cannot repudiate

BENGAL TENANCY ACT (1885), S. 49 K

the lease without refunding the premium paid by the under-rajat (*Henderson, J.*) **DEBENDRA CHANDRA DE v. JASMINI KUMAR DEY.** 43 CWN 1209—A I R 1939 Cal 744

—S 49 K proviso (b)(ii)—Garos—Bona fide mortgage registered more than one year before 1923—If protected

A bona fide mortgage executed by a member of the primitive community called the Ga more than one year before 1923 in violation of Chap VII A of the B T to the Garos comes within the S 49 K proviso (b)(ii) of the Act, a

entitled to sell the property in execution of his final mortgage-decree. (*Derbyshire, C J* and *Syed Nasim Ali, J.*) **ARDHA CHANDRA SAHA v. NAMANI GARONI.** 182 I C 666=12 R O 91=69 C L J 120—A I R 1939 Cal. 323

—S 49-L—If mandatory

The provision of S 49-L of the B T. Act by which the Court executing the decree should allow the tenant a reasonable time is mandatory

time whether (*Derbyshire, C J*) **CHANDRA SAH.** 12 R O 91=69 C L J. 120—A I R 1939 Cal. 323.

—S 60—Dakhilas granted by landlord's agent—If conclusive against landlord

Dakhilar showing payments of rent, granted by an authorised agent of the landlord are not conclusive against the landlord. S 60 of the Bengal Tenancy Act does not prevent the landlord no payments had been made, collusive documents. The on this, that the onus is shifted on (*J.*) **JOCENDRA MOHAN KARMAKAR.**

—S 65—Sale of holding—Right of co sharer landlord who has parted with his interest.

The right to bring the tenure or holding to sale under S. 65 appertains exclusively to the landlord, and a person to whom certain rents are due, and who obtains a decree therefor after he has parted with the property in which the tenancy is situate, has no such right (*Edgley, J.*) **NARENDRA NATH v. ALANGA SUNDARI** A.I.R. 1939 Cal 754

—S 85—Sub lease created by raiyat Superior landlord purchasing raiyats sale after repeal of section—If can tr

sub-lease created by the raiyat before the repeal of that section as void and i lease was void under (*Roxburgh, J.J.*) **P NATH.**

—S 86 (6)—Holding. Section 86, Cl (6) ble holding. Though terms of a holding it visions of the Act of proof of any custc be non transferable claim that the surren the landlord could nc his consent (*James DERJI v. HEM CHAT*

Y. D. 1939—5

BENGAL TENANCY ACT (1885), S. 145.

182 I C 557=5 R R 779=12 R P 21=20 Pat.L.T. 469=A I R. 1939 Pat 200.

—S 88, Proviso 2—Kabuliat involving division of original holding without consent of all co sharer tenants—Validity—Inclusion of new land in kabuliat—Effect of.

New kabuliat which involves a division of the original holding without the consent of all the co-sharer tenants

—Ss 103-B and 50—Tenant not entitled to presumption under S 50—Payment of same rent for long period—If rebutts presumption under S. 103 B.

It cannot be held in a case brought under the Bengal Tenancy Act that any presumption arises as to the fixity of rent from mere payment of the same rate of rent for a number of years apart from the presumption arising under S. 50 of the Act. Where a tenant is not legally

same rate of rent for a long period. (*Edgley, J.*) **DWARIKA NATH SAHA v. RASIK LAL SAHA.** 179 I C. 992=11 R O. 643=A I R. 1939 Cal. 19.

—S 104 J—Presumption under—Record of rights—Entry regarding rent—Conclusive nature of. Though the presumption of correctness attaching

A I R. 1939 Pat. 44. —S. 106—Suit under—Questions of title—Power of Court to consider.

A suit for the determination of a bare question of title divorced from possession is not one which falls within the purview of S. 106 of the Bengal Tenancy Act. But this does not mean that the Court is not under any circumstances to consider questions involving the title of the rival parties. In order to determine the

=A I R. 1939 Cal. 768. plication for landlord's in of Court.

The whole of S 144 of the B. T. Act seems to refer

BENGAL TENANCY ACT (1885), S 170.

possession of the purchased holding and may successfully

A I.R. 1939 Pat 200

—S. 170—*Decree for arrears of rent against recorded tenants of putni tenure—Tenure attached and advertised for sale in execution—Claim filed by tenure holders under O. 21, R. 58, C. P. Code—Maintainability*

A putni tenure had been sub divided amongst a number of tenure-holders. The proprietors brought a suit for rent, in respect of the entire tenure against the recorded tenants and obtained a decree *ex parte*. The decree was in due course put into execution and the putni tenure was attached and advertised for sale. Thereupon, some of the tenure-holders filed a claim under O. 21, R. 58, C. P. Code, stating that they had a 4-a-na share in the attached putni mehal, that they had been paying rent to their landlord and as they had not been made parties to the original suit, the decree passed in that suit was not a rent decree. These tenure holders had not however applied in the suit for rent for being made parties.

Held, that the decree as it stood was void against all the co tenants including the tenure-holders, and as they had their remedy by way of suit, their claim under O. 21, R. 58 was barred under S. 170, B T Act (*S K Ghose and B. K. Mukherjee JJ*) **DEBENDRA NATH v SASI BHUSAN**
182 I C 489 = 12 R C 72 =

A I.R. 1939 Cal 272

—Ss 173 (3) and 174—*Order setting aside sale*

the application is open to an appeal by one who was a party to the rent suit and to the application (*Edgley, J*) **ADAM ALY KHAN v JAGADISH CHANDRA**
43 G W N 108.

—S 174—*Application to set aside sale—Limitation—Sale processes fraudulently suppressed by decree holder purchaser—Applicant's knowledge of fraud—Burden of proof*

Where in an application to set aside a rent sale under S. 174 of the B T. Act, the Court finds that the decree holder purchaser fraudulently suppressed the sale processes, the burden is upon him to show that the person injured by this fraud and suing to recover the property had clear and definite knowledge of the fact which con-

BENGAL TENANCY ACT (1885), S 184.

MONI DAS.

182 I.C. 760 = 12 R C 104 (1) =

43 G W N. 553 = A I R 1939 Cal 309.

—S. 174 (5)—*Appeal presented before but deposit made after limitation—Competency.*

Where an appeal is preferred against an order dismissing an application to set aside a sale, the deposit must be made as required by S. 174 (5) of the B T. Act before the appeal can be entertained at all. If, thereupon, the deposit is made after the period limited

GABAN CHANDRA BISNAI v. SATIA DEVI

I L.R. (1939) 2 Cal. 49

—S. 174 (3)—*Locus standi to apply—Transferee of holding from judgment debtor before decree*

A person who alleges that the holding had been transferred to him by the judgment debtor before the date of the rent decree, and who was not a party to the rent suit or to the subsequent proceedings taken in execution of the decree, has no *locus standi* to apply to have the execution sale set aside under S. 174 (3) of the Bengal Tenancy Act. (*Edgley, J*) **CHARUBALA DEI v. BAIKUNTHA NATH JANA**
182 I C. 980 = 12 R C. 124 = 43 G W N. 743 = A I R 1939 Cal 419.

—B 174 (5)—*Deposit under—When to be made—Power of Court to extend time*

S. 174 (5) of the Bengal Tenancy Act contemplates that the amount recoverable in execution of the decree must be deposited with the appellate Court immediately after the presentation of the appeal to the Court in question and before its registration. The deposit is a condition precedent or at any rate a contemporaneous

—S 179—*Scope—Kabuliyat—Stipulation in providing for 6½ per cent per month interest in case of default in instalment even in respect insignificant or petty default—Power of Court to relieve against—Contract Act S. 74, etc*

Under S 179 of the Bengal Tenancy Act, the parties are competent to make their own contract. But if a provision in a *kabuliyat* is found to be a penalty the Court has ample jurisdiction to grant proper relief to the tenant. Where a tenant in his *kabuliyat* undertook that he would not deposit any amount of rent, road cess, etc., that fell short of the amount of any kist, and that if any instalment of rent, road cess, etc. paid by him fell short by even a rupee the case should be competent to realise at the rate of 6½ per cent. per annum on the amount of instalment or rent, etc., in default to the date of realization without

NARAYAN SINGH

1939 P.W.N. 220.

—S. 174 (5)—*Deposit under—When to be made—Power of Court to extend time*

Where an appeal is preferred against an order dismissing an application to set aside a sale, the deposit must be made as required by S. 174 (5) of the B T. Act before the appeal can be entertained at all. If, thereupon, the deposit is made after the period limited

vided by O. 20, R. 3, C P. Code. In a case such as this, the Court may set aside the sale, and a

BIHAR MONEY-LENDERS ACT (1938), S. 15.

S 107, Government of India Act, void (*Mahomed Noor and Dhaule, J.J.*) *MATHURA PRASAD SINGH v. BHAN KUMAR CHAND* 20 Pat L T 513 = 5 BR. 856 (2) = 182 IC 989 = 12 R.P. 93 = AIR 1939 Pat 217

—S 15—Scope—If void as repugnant to O 34 and O 21, R 11 (2), C. P. Code

S 15 of the Bihar Money Lenders Act is repugnant to the provisions of O 34, C P Code, and is therefore void.

Quere—Whether S 15 is also void on account of its repugnancy to O. 21, R 11 (2), C. P. Code (*Ahaja Mohamad Noor and Dhaule, J.J.*) *RENUKABAI PRASAD*

ground that it is repugnant but the reservation of the Governor General's assent to it make such C.J., *Sulaiman and Varadachariar, J.J.*

do apply to mortgage decrees and sales thereunder (*Harries, C.J. and Fazl Ali, J.*) *RAZIA BEGUM v. KRISHNABENARAYAN MAHTHA* 184 IC 134 (1) = 12 RP 221 = 6 BR 22

—S 13—Proclamation of sale not issued before Act coming into force—Rights given by section—If can be availed of.

There is no substance in the contention that litigants can only avail themselves of the rights given by S 13 of the new Act in cases where a proclamation of sale has

BIHAR TENANCY ACT (1885).

—S 13—Retrospective operation—Pending proceedings—If affected—Rejection of application under S 16—Appeal—Amending Act of 1939 coming into force pending appeal—Effect of—Sale taking place before hearing of appeal—Effect of on rights of parties to appeal

S. 13 of the Bihar Money Lenders (Regulation of Transactions) Amending Act of 1939 is retrospective and applies to proceedings pending at the time when that Act came into force. The section applies to applications made before or after the commencement of the Act. When an order rejecting an application under S 16 of the Act of 1939 is made before the commencement of the Act of 1939, the application is not affected by the Act of 1939.

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made and decrees passed "before or after the commencement of this Act" (*Gwyer C.J., Sulaiman and Varadachariar, J.J.*) *SHYAMAKANT LAL v. RAMBHAJAN*

AIR 1939 FC 74 = (1939) 2 M L J (Supp) 45.

BIHAR RESTORATION OF BAKASHT LANDS ARREARS OF RENT

—Applicability to execution

IX of 1938 does apply to *Ahaja Mohamad Noor and Dhaule, J.J.*

(1939) 2 M L J. (Supp) 45.

—Ss 13 and 14—Retrospective operation

Ss 13 and 14 of the Bihar Money Lenders Act, 1939, are retrospective in the sense that they apply to proceedings pending at the time when the Act came into force (*Harries C.J. and Fazl Ali J.*) *MAHABIR SARAN PRASAD SINGH v. LACHHMI SAO* 184 IC 64 = 12 RP 218 = 6 BR 12

BIHAR TENANCY ACT (VIII OF 1885, as amended in 1934)—Scope and effect of—"Abwab"—Law as to—If altered—Kathari—If abwab—Mutafar bithouri—Meaning and nature of.

The recent amendment of the Bihar Tenancy Act has not changed the law as to *abwab*. What was *abwab* before is *abwab* now, and what was not *abwab* before has not been made such by the new Act. The only modi-

BIHAR MONEY-LENDERS ACT (1938), S 15

S 107, Government of India Act void (*Mahomed Noor and Dhaule JJ*) MATHURA PRASAD SINGH BHAN KUMAR CHAND 20 Pat LT 51
5 BE 856 (2)=182 IC 989=12 RP 9
AIR 1939 Pat 2

—S 15—Scope—If void as repugnant to O 34 as O 21 R 11 (2), C P Code

S 15 of the Bihar Money Lenders Act is repugnant to the provisions of O 34 C P Code, and is therefore void

Quære—Whether S 15 is a so void on account of its repugnancy to O 21 R 11 (2) C P Code (*Akaya Mahomed Noor and Dhaule JJ*) BENJAMIN PRASAD

BIHAR TENANCY ACT (1885)

—S 13—Retrospective operation—Pending proceedings to S 16
force before
rites to

S 13 of the Bihar Money Lenders (Regulation of Transactions) Amending Act of 1939 is retrospective and applies to proceedings pending at the time when that Act came into force. The section applies to applications made before or after the commencement of the Act. When an order rejecting an application under S 16 of the Act of 1939 came into force, the

of money lenders it does not in terms profess to exercise powers only belonging to the Provincial Legislature under the Provincial Legislative List. In these circumstances the new Act can only be challenged on the ground that it is repugnant to an existing Indian law, but the reservation of the Act for the consideration of the Governor General and His Excellency's subsequent assent to it make such a challenge impossible (*Gwyer CJ Sulaiman and Varadachariar JJ*) SHYAMAKANT LAL v RAMBAHAJAN SINGH 182 IC 161=12 RFC 1=2 FLJ 183=43 CWN (FCR) 68=1939 OLR 399 5 BE 756=1939 MWN 674=1939 PWN 533=20 Pat LT 473

P Code, as amended by Patna High Court

Sulaiman J—Repugnancy should not be extended to a section by implication if it does not in fact exist. There is no repugnancy between the new S 13 (old S 16) Bihar Money Lenders Act and O 21 F 66, C P Code as amended by the Patna High Court (*Gwyer CJ Sulaiman and Varadachariar JJ*) SHYAMAKANT LAL v RAMBAHAJAN SINGH 182 IC 161=12 RFC 1=1939 FCR 193=2 FLJ 183=43 CWN (FCR) 68=182 IC 161=1939 OLR 399 5 BE 756=1939 MWN 674=1939 PWN 533=20 Pat LT 473

and Varadachariar, JJ) SHYAMAKANT LAL v RAMBAHAJAN SINGH 182 IC 161=12 RFC 1=2 FLJ 183=43 CWN (FCR) 68=182 IC 161=1939 OLR 399 5 BE 756=1939 MWN 674=1939 PWN 533=20 Pat LT 473

—S 13—Proclamation of sale not issued before Act coming into force—Rights given by section—If can be availed of

There is no substance in the contention that litigants can only avail themselves of the rights given by S 13

chariar JJ) SHYAMAKANT LAL v RAMBAHAJAN SINGH 182 IC 161=12 RFC 1 (1939) FCR 193=2 FLJ 183=43 CWN (FCR) 68=182 IC 161=1939 MWN 674 1939 OLR 399=1939 PWN 533=5 BE 756=20 Pat LT 473=AIR 1939 FC 74=(1939) 2 MLJ (Supp) 45.

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Chatterji JJ) RAZAUR RAHMAN v UDIT SINGH 18 Pat 694 20 Pat LT 492 1939 PWN 530=

I OF 1885 as
of—'Abwab—
abwab—Matarfa

Tenancy Act has not changed the law as to *abwab*. What was *abwab* before is *abwab* now, and what was not *abwab* before has not been made such by the new Act. The only modi-

Ss 1
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ceeding
force (*Harries CJ and Fazl Ali J*) MAHABIR SARAN PRASAD SINGH v LACHHMI SAO 184 IC 61=12 RP 219=6 BE 12

BIHAR TENANCY ACT (1885), S. 5.

fixation has been as to the nature and amount of punishment for exacting an illegal *abwab*. *Kathari*, which is payable by the weavers to their landlords on the basis of the loans which they work on the land, is a rent payable on the basis of the work to be done on the land and not on the basis of the area of the land occupied. It is not an *abwab* but an amount legally payable to the landlord. *Mutarfa* is ground-rent and *Kathari* is profession tax according as the settlor takes up cultivation or merely trade. *Ritkura* may be either *mutarfa* or *Kathari*, and is practically rent for homestead land based on the profession carried on on the land. (*Khara Vishwamedh Nair and Dhale, J.*) HAJUMAN PRASAD v. PUKAN TATMA. 18 Pat 190=179 IC 840=11 EP 419=1939 P.W.N. 271=5 BR 303=20 Pat L.T. 88=AIE 1939 Pat. 252

—S 5(1)—*Usufructuary mortgage by owner and lease back to him—Effect—Relation of landlord and tenant—If created—Incidents*

Where the proprietor of a holding or estate executes a usufructuary mortgage and takes a lease of the same from the mortgagee, the transaction is essentially one transaction, and the relationship of landlord and tenant is created between the parties. A tenure as defined by S 5(1) of the Bihar Tenancy Act is created thereby.

AIR 1939 Pat 272

—S 21—*Cultivating lease—Lease to settled ryot, of kharbaur and khudkasi land fixing annual jama payable to landlord—Tenant entitled to remain in*

only, it make the recourse and S. SUMRIT

holding of tenant—Entry to latest record recording trees as in possession of landlord—Effect of—Right of landlords to produce of trees.

Where it is recorded in the latest record of rights that there were trees on the tenant's holding and that they were in the possession of the landlord, the entry must be interpreted as meaning that the landlord is

BIHAR TENANCY ACT (1885), S. 26 F.

entitled not only to his common law right to the timber, but also to the produce of the trees. The trees being on the tenant's land, the landlord is in possession through his tenant and no question of limitation or adverse possession can arise in the absence of an assertion of a hostile title by the tenant. (*Agarwala, J.*) MAHOMED NAIN v. LACHCHU SAHU. 1939 P.W.N. 868.

—Ss 26 B and 26 N—*Applicability to mortgages.*

Sections 26 B and 26 N by their terms apply to transfers by sale, exchange, gift or will. They do not apply to mortgages and therefore do not protect *sudbharnadar*. Assuming, however, that the view that when a mortgage is followed by a sale in execution of a decree on the mortgage the execution sale may be treated on the same footing as a voluntary sale and would therefore come within the purview of S 26 B is correct, it does not hold good with regard to usufructuary mortgages. (*James and Chatterjee, J.*) RAM CHANDERJI v. HEM CHANDRA. 18 Pat 184=182 IC 557=12 RP 21=20 Pat L.T. 469=5 BR 779=AIE, 1939 Pat 200.

—(as amended in 1938), S 26 B, Proviso—*Scope and operation of—Non transferable holding—Transfer in 1912—Transferee in possession continuously thereafter—Consent of landlord—Presumption—Sale of holding in execution of rent decree against original tenant alone in 1931—Suit for ejectment of transferee by purchaser in execution—Competency*

In the case of a transfer of a holding made before 1923, if the transferee has been continuously in possession since the transfer, the Court, under the proviso to S 26 B of Bihar Tenancy Act as amended in 1938, must assume that the landlord consented to the transfer, and therefore the transferee cannot be ejected. A non

things and therefore could not deliver possession. 29—11—1933, the plaintiff sued for a declaration and for possession after removal of the

to S. 26 B of the Act, it must be with the consent of who had been concerned of transfer could

1939 P.W.N. 868. —(as amended in 1934), S 26 F (1) (b) and (c)—*Scope—Transferee—Title of—Conditions of—Duty of transferee to pay landlord's fee to landlord and deposit same with Collector.* Under the Bihar Tenancy Act as amended in 1934, a transferee of a holding has no valid

BIHAR TENANCY ACT (1885) S 49

the landlord may be deemed to have been given to transfer (*Dharle J*) GAYA PRASAD SAH v PRASAD PATHAK 179 IC 923=5 BR 3 11 RP 425-A IR 1939 Pat 400

S 49—*Applicability*—Under rayat—Home stead comprised in holding of agricultural and homestead land—Settlement on condition that lessee supplied milk curd and ghee to settlor at certain prices on ceremonial occasions—Status of lessee—Notice of ejectment—Necessity

Where lands included in the holding of an agricultural rayat consists partly of agricultural and partly of homestead land and the homestead is let out for use as homestead the person to whom it is so let is an under-rayat and such person is not liable to ejectment unless a notice has been served upon him in accordance with the provisions of S 49 of the Bihar Tenancy Act Where homestead land is so let person on condition that he provide to the settlor at certain prices and assisted him in his tenancy is created and the person taking such settlement is an under rayat liable to ejectment only on notice served in accordance with S 49 (*Agarwala, J*) MIAN AHIR v PARAMHANS PATHAK 181 IC 172=11 E.P. 571-5 BR 541-A IR 1939 Pat 409

Ss 52 and 180—*Relative scope*—Right of tenure holders to abatement

Section 52 is a much wider section than S 180 inasmuch as it deals with every class of tenants S 52 undoubtedly gives right of abatement to tenure holders (*Wort, J*) NRIPENDRA NATH CHATTERJI v JUGAL PRASAD MANDAL AIR

S 60—*Applicability*—Condition

S 60 of the Bihar Tenancy Act is

BIHAR TENANCY ACT (1885), S 155

S 60 of the Bihar Tenancy Act bars a plea that the

S 65—*Scope and effect*—Rent decree—Sale of holding—Purchaser in execution—Rights of as against mortgagee of holding under mortgage executed prior to sale—Priority—Delay in applying under S 167—Effect of

A purchaser (not being a landlord) of a holding in execution of a decree for rent has a charge for the amount of the decree for rent as against the holder of a mortgage of part of the holding executed before the purchase and is entitled to the same rights as the purchaser of a holding in execution of a decree passed on a prior mortgage This priority is acquired by the purchaser as a matter of law in consequence of the rent charge on the holding under S 65 of the Act and it should not be confused with the charge conferred on him by S 167 of the Act until after the expiry of more than a year after the purchaser becomes aware of the mortgagee cannot

S 103 B—*Record finally published*—Presumption attached to—Rebuttals—Proceedings before survey authorities before publication—Admissibility in evidence

1935 P W N 100-A IR 1939 Pat 402
S 163—*Scope*—Second appeal—Bar of—Finality

of been not a

(*Jones and Agarwala JJ*) DWARKA DAS v BHFKU MAHTON 18 Pat 502=181 IC 308=6 BR 34=12 RP 236=20 Pat LT 659=1939 P W N 607=A IR 1939 Pat 520

S 155—*Applicability*—Permanent mukarrari lease—Provision entitling lessor to re enter on default of payment of rent on certain date of any year—Default by lessee—Lessor's right of ejectment

The application of the provisions of S 155 of the Bihar Tenancy Act relating to ejectment is excluded by S 179 where the conditions entailing forfeiture are pro-

PRASAD v RAM 18 Pat 746=

S 60—*really entitled to interest*—Right to extent of interest

Under S 60 of the Bihar Tenancy Act it is quite clear that the registered proprietor of an estate is not entitled to the rents due to the tenants in realty or even to no hatterjee JJ)

RAMA PRASAD v RAM RAN VIJAYA PRASAD SINGH 18 Pat 746=20 Pat LT 752=1939 P W N 683=A IR 1939 Pat 630

S 60—*Scope*—Plea barred under

BIHAR TENANCY ACT (1885), S. 167.

vided by a contract between the parties to a permanent mukarrari lease. Where, therefore, such a lease contains a provision entitling the lessor to re-enter on default of payment of rent on a certain date of any year and the lease is forfeited by default in payment by lessee, the lessor can enforce his unqualified right of ejectment given him by the contract without conforming to the provisions of S. 155. (*Agarwala v. MUKHAN SINGH v. CHANDRIKA PRASAD SINGH.*)

5 B.R. 462-180 I.C. 621-11 R.P. 523-20 Pat L.T. 440-A.I.R. 1939 Pat. 413

—S 167—Scope—Purchaser at sale in execution for rent decree—Rights of—Failure to annul incumbrance created prior to sale—Effect of right to priority. See BIHAR TENANCY ACT, S. 65

18 Pat 676-1939 P.W.N. 523-A.I.R. 1939 Pat 339 (F.B.).

—S 179—Lease falling under—Clause for re-entry on non-payment of rent—Validity.

S 179 of the Bihar Tenancy Act is by its exception to the law as laid down in the earlier. It permits the parties to a lease falling within section to contract out of the provisions of the Act. A clause in such a lease entitling the landlord to on non payment of rent is, therefore, perfectly valid and can be enforced by a suit at law (*Harries, C.J. and Fazl Ali, J.*) MUHAMMAD HASAN v. BAIDYA NATH SAHAY. 6 B.R. 62-12 R.P. 253-184 I.C. 605

—(as amended in 1934), S. 184 and Sch. III, Art. 2 (b) (ii)—Scope—If retrospective—Interpretation of statutes—Act amending statute of limitation and shortening period of limitation—Retrospective operation—Limitation—Law applicable

The Bihar Tenancy Amending Act of 1934 applies to all suits instituted after the 10th June 1935, whether the cause of action had accrued or not before that date. There is a great difference between a case where a statute amending the law of limitation comes into force immediately and the case where a period of time is given between the passing of the Act and the date upon which

it should come into force, such an Act must be given retrospective effect.

Agarwala, J.—The law of limitation being a breach of the objective law, the statute of limitation applicable to a particular suit or legal remedy is that which is in force at the date when the suit is instituted or the remedy is sought and not the statute which was in force at the time of the transaction or the vesting of the cause of action on which the suit or remedy is based (*Harries, C.J. and Fazl Ali, J.*)

—Scope—Retrospective operation—Suit after Act in respect of cause of action accrued before—Law applicable.

Ordinarily an Act of Limitation is placed in the category of adjective law and under the established rules of interpretation it has retrospective effect. The new Bihar Tenancy Act of 1934 curtailing the period of limitation for a suit for produce rent is retrospective and affects causes of action already accrued. The Act would apply to suits instituted after it came into force though the cause of action may have arisen prior to it (*Fazl Ali and Varma, J.J.*) BIRANCHI SINGH v. NAND KUMAR SINGH. 18 Pat. 355-183 I.C. 212

Y. D. 1939-6

B. & O. MUNICIPAL ACT (1922), S. 62.

12 R.P. 116-5 B.R. 902-1939 P.W.N. 108-20 Pat L.T. 139-A.I.R. 1939 Pat. 282.

—(as amended in 1934), Sch. III, Part I, Art. 2 (iii) (b) (ii)—Applicability—Holding consisting of lands partly on cash rent and partly on produce rent—Suit for rent instituted after November, 1934—Limitation.

A suit for rent of a holding for part of which cash rent is paid and for part of which produce rent is paid, instituted after the Bihar Tenancy Amending Act of 1934 came into force is governed by the shorter period of limitation prescribed by Art. 2 (iii) (b) (ii) of Sch. III, Part I, of the Act, though the cause of action might accrue before the passing or coming into force of the Amending Act of 1934 (*James and Rowland, J.J.*) SIDHESHWAR PRASAD v. RAM CHARITER CHOU DHURY. 182 I.C. 451-5 B.R. 746-12 R.P. 19-1939 P.W.N. 217-A.I.R. 1939 Pat. 269.

—(as amended in 1934), Sch. III, Part I, Art. 2 (iii) (b) (ii)—Applicability—Holding consisting of lands partly on cash rent and partly on produce rent—Suit for rent instituted after November, 1934—Limitation.

—Bihar and Orissa Municipal Act, a road includes on both sides of it the land between the metalled portion of the roadway and the defined boundary of the abutting property (*Harries, C.J. and Fazl Ali, J.*) PATNA CITY MUNICIPALITY v. DWARKA PRASAD SINHA. 18 Pat 735-184 I.C. 52-6 B.R. 8-12 R.P. 214-20 Pat L.T. 810-A.I.R. 1939 Pat. 683.

—S 12—Chairman—Representative—Capacity of By S 12, the Commissioners become a legal entity which legal entity is not represented by the Chairman, although reference is made to the Chairman from time to time in the Act, he is a person who apart from such reference is unknown to the law, is not a legal entity but is merely a person. If the Chairman is sued, the plaintiff is entitled to relief only against him. In no sense of the word can he be held to be the representative of the proceedings, of the Municipality and there is no justification on any or under the Act itself to his relief against the Commissioners in an action against the Chairman. It is not merely a mistake of form but it goes to the very

entity nor a corporation sole and therefore the suit is not maintainable.

—S 62—Disposal of road—Power of Municipality. HAZARIBAGH MUNICIPALITY. 181 I.C. 486-11 R.P. 594-20 Pat L.T. 139-A.I.R. 1939 Pat. 282.

—S 62—Disposal of road—Power of Municipality. There is no exhaustive definition of "road" in the Bihar and Orissa Municipal Act and the words "sell, lease, exchange or otherwise dispose of" in S. 62 seems to be wide enough to include the power to sell a road, yet the Municipality is not entitled to sell such road. At its disposal is the

B & O MUNICIPAL ACT (1922) S 62

given to the Municipality by S. 62 is to sell lease exchange or otherwise dispose of any land not required as a road or for other purposes of the Act. If such land is still required for any of the purposes of the Act then it cannot be disposed of under the powers given by S. 62 (*Harries C J and Fazl Ali, J*) **PATNA CITY MUNICIPALITY v DWARKA PRASAD SINHA**

18 Pat 735=20 Pat LT 810=12 R P 214=6 BR 8=184 I C 52=A I R 1939 Pat 683

—S 62—Land vested in Municipality under S 58—Disposal of—Power of Commissioners

The power of sale, lease or exchange given to the Commissioners under S. 62 of the Bihar and Orissa Municipal Act is not confined to land which has been acquired by the Municipality under that section but extends to land which is vested in the Municipality by reason of S. 58 of the Act (*Harries C J and Fazl Ali J*) **PATNA CITY MUNICIPALITY v DWARKA PRASAD SINHA**

18 Pat 735=184 I C 52=6 BR 8=12 R P 214=20 Pat LT 810—A I R 1939 Pat 683

—S 82—Burden of proof on assessee that meeting was not held—Failure of municipal officers to produce papers called for with explanation for non production—Finding that meeting was not held—Irregularity of imposition of the tax

It must be assumed that what ought to

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to the meeting were not forthcoming. The Judge thereupon came to the conclusion that the meeting was in fact not held.

Held, that in these circumstances the imposition of the tax was irregular. It did not however prevent the Municipality from holding a meeting and imposing the tax in a proper and regular manner (*Wort Ag C J*) **COMMISSIONERS OF DARBANGA MUNICIPALITY v SHIVA PRASAD**

179 I C 965=11 R P 432(1)=5 BR 326=20 Pat LT 119—A I R 1939 Pat 20

—S 109 (2)—Sharahmooyar holding in Municipality consisting of several plots including house—Municipal tax paid by tenant for land—Right to deduct from rent payable to landlord—S. 3 (13)—Owner

A tenant of a sharahmooyan holding consisting of a number of plots within a municipality one of which is a house occupied by him is entitled to deduct from the rent payable by him to his landlord the municipal tax which he pays for the land under S. 109 (2) of the Bihar and Orissa Municipal Act. The tenant cannot be treated as the owner of the house or the land though he has an unrestricted right of transfer under the tenure. Owner as defined in S. 3 (13) of the Act is the person who is entitled for the time being to receive any rent with respect to the land and the landlord is therefore the owner. The tenant is consequently entitled to claim a set off for the municipal tax paid by him (*Manohar Lal J*) **HARIHAR PRASAD v ANANT PRASAD**

183 I C 48=12 R P 84=5 BR 854=20 Pat LT 86=A I R 1939 Pat 352

—S 115—Applicability—Latrine taxes

Section 115 relates not only to taxes on persons but

B & O MUNICIPAL ACT (1922), S 185

All that the Act provides is that the objections should be heard by a Committee consisting of not less than three Commissioners. It may be a domestic or internal arrangement of the Municipality in assigning cases of one Ward to one Committee and another Ward to another Committee. But it is purely domestic and in no way affects the jurisdiction. There is nothing in the Act to prevent the Municipal Commissioners from arranging their business in whatever way they desire so long as they comply with the provisions of the Act and the fact that the objections regarding cases of one Ward were heard by the Committee which was directed to hear cases regarding different Wards does not go to the root of the jurisdiction (*Wort, J*) **KALI PRASAD SINHA v BADRI NARAIN SAHU**

182 I C 457=12 R P 16=5 BR 768=20 Pat LT 613=A I R 1939 Pat 236

—S 117—Scope—Objection—Validity of assessment

Section 117 is quite clear that the objection should be heard and determined by a Committee consisting of not less than three Commissioners. The mere fact that the decision was by majority and that the two members of the Committee who heard the objection were unanimous in their decision makes no difference. But again it

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PRASAD SINHA
182 I C 457—
0 Pat LT 613=
A I R 1939 Pat 236

—S 172 (c)—Power of Commissioners—Scope of

Under S. 172 (c) of the Bihar and Orissa Municipal Act the power given to the Commissioners to turn divert, discontinue or close any public road is a power to do so when they are carrying out the road development or road improvement scheme. The section does not empower the Commissioners to close any public road if they so think fit (*Harries C J and Fazl Ali, J*) **PATNA CITY MUNICIPALITY v DWARKA PRASAD SINHA**

18 Pat 735=184 I C 52=6 BR 8=12 R P 214=20 Pat LT 810=A I R 1939 Pat 683

—S 172 (1)—Disposal of roadway—Power of Commissioners

Cl (f) of S. 172 of the Bihar and Orissa Municipal Act must be read with the preceding clauses and it does not give the Commissioners an unrestricted right to dispose of any roadway (*Harries C J and Fazl Ali J*) **PATNA CITY MUNICIPALITY v DWARKA PRASAD SINHA**

18 Pat 735=184 I C 52=6 BR 8=12 R P 214=20 Pat LT 810=A I R 1939 Pat 683

—S 185—By laws—Lease of road by Municipality for erection of permanent structures—Validity—Access to road—Right of owners of abutting land

The by laws made under S. 185 of the Bihar and Orissa Municipal Act restrict the rights of the Municipality to grant licences for the use or occupation of any public road. In no case can they grant a licence for the erection of any permanent booth or stall, and the

B & O PUBLIC DEMANDS RECOVERY ACT (1914), S 46.

are a serious infringement of one of their most valuable

BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT (IV OF 1914), S 46—Scope—
"Making of a certificate"—*Meaning of*—*Deputy Collector enhancing rent of holding in suit by landlord*—*Appeal to Collector*—*Letter varying rate of rent in appeal*—*Jurisdiction*—*Suit to declare decision of Collector null and void*—*If barred*.

An appeal is a creation of statute and no one can constitute himself an appellate tribunal in a case where the statute does not constitute him an appellate tribunal for the purpose of an appeal. In the case of a decision by a Deputy Collector enhancing the rent of a holding in a suit by the landlord, the tribunal indicated by the statute to hear an appeal is the District Judge. The Collector has no jurisdiction to hear such an appeal and if he entertains an appeal and makes an order, that would be *ultra vires* and null and void. The making of a decision as to the validity of the Collector's order purporting to be passed in the appeal cannot be a question relating to the making of a certificate within the meaning of S. 46 of the Bihar and Orissa Public Demands Act. The 'making of a certificate' in that section means the doing of those things which are required to be done by the Certificate Officer under the statute. It is not necessary for that officer to come to a decision as to the validity of the Collector's order as that order is on the face of it null and void. S. 46 of the Act is therefore no bar to a suit for a declaration that the decision of the Collector passed in appeal is *ultra vires* and that the tenants are therefore liable to pay rent at the rate to which it was enhanced by the Deputy Collector whose decision was varied by the Collector without jurisdiction. (*Agarwala, J*) **SARAPANANDA SAMAL v. RAJA RAJENDRA NARAYAN BHUNJ DEO.** 5 CLT 6

BILL OF LADING—Meaning and incidents of—Transfer of bill of lading—Effect of. See SHIPPING—BILL OF LADING

ILR (1939) Kar 439=

AIR 1939 Sind 227

BOILERS ACT (V OF 1923), S 2 (b)—Boiler—
Meaning of definition.

The meaning of the definition of boiler in S 2 (b) of the Boilers Act is, that the definite and clear object of the contrivance should be to generate steam under pressure. The fact that in a particular contrivance though steam is generated under pressure, the steam is used only for sterilizing some vessels, cannot take it away from the definition of a 'boiler', for the use to which the steam is ultimately

the issue. (*Mulla, J*) A

184 IC 48

1939 A CrC 178=

BOMBAY ACTS

BOMBAY CITY MUNICIPAL ACT (1888), S. 19.

Khoti Settlement Act (I of 1880).

Land Revenue Code (V of 1879)

Land Revenue Rules

Local Boards Act (VI of 1923).

Motor Vehicles Act (XIV of 1935)

Municipal Boroughs Act (XVIII of 1925).

Prevention of Gambling Act (IV of 1887)

Primary Education Act (IV of 1923)

Revenue Jurisdiction Act (X of 1876)

BOMBAY BORSTAL SCHOOLS ACT (XVIII OF 1923), S 6—Previous convictions as evidence of criminal habits—Proof—Necessity for—Degree of proof

Where the evidence of criminal habits or tendencies from which it is to appear to Court that it should take action under S. 6 is that of previous convictions, the Court should require these previous convictions to be properly proved before it can say that there is evidence from which it can appear to the Court that the accused is of criminal habits or tendencies within the meaning of Cl. (b) of S. 6. The standard of proof in such a case is the same as that required for purposes of S. 75 I P Code. Where the only evidence of previous convictions was merely the extracts from records of the Central Bureau of fingerprints and no certificate from jail officer or warrant of commitment was produced to prove it.

Held, that the Court could not on such evidence take account of the previous conviction and that it could not therefore take action under S. 6 (*Datta, J* and *Tyabji, J*) **EMPEROR v. ABDULLAH KARIM**

AIR 1939 Sind 335.

—S 6—Reference under—Conditions precedent to—Maintainability

Before a case is referred to the High Court under S. 6 a reference should be first made to the Inspector General and only when he is of the opinion that he cannot by reason of the particular circumstances of the case or the provisions of S. 11 transfer a young offender to Borstal School by his own order or with the previous sanction of Government, should any reference in such matters be made to High Court. (*Datta, J* and *Tyabji, J*) **EMPEROR v. ABDULLAH KARIM.**

AIR 1939 Sind 335

BOMBAY CHILDREN'S ACT (XIII OF 1924),

S 51 (3)—Powers of High Court—Power to extend period of detention of youthful offender—Limits.

The High Court has, under S. 51 (3) of the Bombay Children's Act, jurisdiction to extend the period of detention of a youthful offender sentenced under S. 23 of the Act, provided the extended period does not exceed the limit specified in S. 32 of the Act. There is no limit of time within which the revisional powers may be invoked, and the powers can be exercised at any time before the expiration of the term of detention limited in the order under revision. (*Beaumont, C J* and *Leuker, J*) **EMPEROR v. MAHOMED ISLAN** 184 IC 205=

12 B.R. 153=40 Cr.L.J. 900=41 Bom.L.R. 554=

AIR 1939 Bom 371

personal right of voter—Specific Relief Act, S 45

The provisions of S. 19 (1) and (4) of the City of Bombay Municipal Act are mandatory, but there is nothing in them which prevents the voters from being grouped in alphabetical order according to communities, the ward lists would still be in alphabetical order, appearing in alphabetical order the communities electorale be any its

BOM. DIST POLICE ACT (1890), S. 39-A.

public street must necessarily be of the ownership of the Municipality. "Public streets" in S. 50 (2) (f) cannot include the sub-soil, unless it is

The section cannot have the effect of depriving a person of any right of private property that he might have in the land used as a public street, nor does it vest the sub-soil of such land in the Municipality. When such land is no longer required as a public road or when it is converted into a private street from a public street, the owner can contend that by reason of such conversion the land of the street reverts to him. (*Lokur, J.*) **CHHOTALAL PANACHAND v. BOROUGH MUNICIPALITY OF NADIAD**
41 Bom.L.R. 1097—
A.I.R. 1939 Bom. 501

BOMBAY DISTRICT POLICE ACT (VI OF 1890) S. 39 A—Order by District Magistrate under Revision application to High Court—Competency See CR. P. CODE, S. 435

A.I.R. 1939 Sind 340

—S 48(1) (a)—Rule-making power under—Extent and limits—Rule prohibiting processions along streets in specified areas except with pass obtained previously from police authorities—If ultra vires.

The rules which a District Superintendent or an Assistant Superintendent can make under S 48(1) (a) of the Bombay District Police Act must be rules with reference to possible future events, but the rules as made

but the actual prohibition under some action by a person who is at an assembly or procession. (*Beaumont, C. J. and Wadia, J.*) **EMPEROR v. DINKAR KRISHNALAL**
18 I.C. 203=12 R.B. 154=40 Cr.L.J. 889—
41 Bom.L.R. 557—A.I.R. 1939 Bom. 364

BOMBAY HEREDITARY OFFICES ACT (III OF 1874), S. 4—"Watanadar"—Meaning of—Person holding watan lands without acquiring office—Status of—Amendment Act (V of 1886), S. 2—"Watanadar family".

A "watanadar" as defined by S. 4 of the Bombay Hereditary Offices Act is a person who has a hereditary interest in property, and who acquires property by property acquired person who merely acquires watan property without acquiring the office is not a watanadar, and to such a person and his family the special law of inheritance enacted by the Watan Amending Act of 1886 has no application.

N. J. Wadia, J.—"Watanadar family" Watan Amending Act of 1886 must be the family of a person who has a hereditary interest in property and in the hereditary office and the rights and privileges attached to that office. (*Beaumont, C. J. and Wadia, J.*) **TARABAI v. MURTA-CHARVA**
41 Bom.L.R. 924—
A.I.R. 1939 Bom. 414.

BOM. H. C. RULES (App. Side), R. 1.

—S. 15—"Holder"—Meaning of—Widow of deceased watanadar—Competency to effect—Commuta-

Hereditary Village Offices Act, and she is not consequently competent to enter into an agreement for commutation of services under that section. (*Broomfield and Macklin, J.J.*) **GOVERNMENT OF BOMBAY v. GANPAT MANOHAR** I.L.R. (1939) Bom. 482=41 Bom.L.R. 772—A.I.R. 1939 Bom. 598

—S. 36—Scope—Principle underlying—Rule of legal primogeniture—Applicability before 1910—Effect of Amending Act III of 1910

The real intention of S. 36 of the Bombay Hereditary Offices Act, as it stood before the amendment of 1910 was that the nearest heir of a deceased watanadar was to be determined according to the rule of lineal primogeniture, and the Amending Act of 1910 merely made explicit the real intention of the section. The amendment of 1910 did not introduce the principle of lineal primogeniture for the first time. (*Wadia, J.*) **HASAN-GOWDA v. FAKIRGOWDA** I.L.R. (1939) Bom. 123=179 I.C. 984=11 R.B. 269=40 Bom.L.R. 1288=41 Bom.L.R. 1288—A.I.R. 1939 Bom. 56.

—S. 36, proviso (3)—Suit to declare plaintiff's right as nearest heir of deceased watanadar as against defendant—Defendant recognised by Government as representative watanadar and entered in the register—

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—S. 58—Officiating kulkarni—Status of—Patent servant See CR. P. CODE, S. 197.

40 Bom.L.R. 1225.

BOMBAY HIGH COURT CIVIL CIRCULARS (1925), CH. VIII—Suit dismissed with costs—Separate defendants incurring separate costs—Separate sets of costs—Award of—If justified. See COSTS—AWARD
41 Bom.L.R. 575.

HIGH COURT RULES (Appellate 1 (a) and 2 (c)—Applicability—Fees—

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to amend the plaint as ordered by the Court on its find-

plaintiff in such a case can only be required to pay one-fourth of the full fees payable under the rules. (*Broomfield and Macklin, J.J.*) **HARI v. BABURAO** 183 I.C. 555=12 R.B. 171=41 Bom.L.R. 415—A.I.R. 1939 Bom. 415.

BOM LAND REVENUE CODE (1879) S 83

agriculture. The determining factor in the levy of altered assessment under S 48 is the altered use to which the property is put. But the mere intention to use property for a particular purpose, without its actual use for that purpose, will not enable Government to alter the agricultural assessment which is the lowest standard of assessment on property under the Land Revenue Code (Hassodew J) RAI CHAND GULAR CHAND v. SECRETARY OF STATE.

41 Bom LR 1077=AIR 1939 Bom 505

—S 65—Construction — Farm building¹—If includes godown

holder and the rights which can be claimed by the actual holder under S 6 become vested in such transferee. The transferee thus becomes the actual holder and is entitled to redeem the mortgage though the transfer in his favour has not been made with the consent of the Khots or the managing Khot. The transferee is at least an ordinary tenant entitled to be in possession until evicted by the Khots in exercise of the right conferred on them by S 10 of the Act (*Lokur I*). **GAFUR USMAN v SAKHARAM TANSHE**

41 Bdm L.R. 1199

facilitating farm operations and the protection of agricultural produce the substantial character of a godown cannot alter its character as farm building (*Wassanodev J*) RAI CHAND GULAB CHAND v SECRETARY OF STATE 41 Bom L.R. 1077 =

AIR 1939 Bom 505

—S 65— Make any other improvements thereon for the better cultivation of the land —Meaning of—Erection of godown to store agricultural produce such as grass for being sold in favourable market—If protected—Altered assessment—If justified on ground of non agricultural use

The words make any other improvements thereon for the better cultivation of the land in S 65 of the Bombay Land Revenue Code ought not to receive a narrow construction limited to some object directly connected with agricultural operations or the act of production merely. Any improvement which conduces to

mitates the marketing of
within the class of im

65 That would include
made by an agriculturist
cultural produces until it

leaves his farm. Thus if grass as agricultural produce is cut, pressed, baled and stored in a godown with the object of eventually selling it when the market improves and it is profitable to sell the produce the construction of a godown which facilitates that object would be

gung Khot does not confer any interest in the Khoti lands on the transferee. The transferee is not a trespasser. The permanent tenancy is terminated by such transfer and the transferee becomes only an ordinary tenant within the meaning of S. 8 of the Act and the Khoti would be entitled to eject the tenant who is only an ordinary annual tenant after giving proper notice to quit under S. 84 of the Revenue Code. But until the tenancy is terminated by such notice - the transferee is entitled to possession of the lands as a tenant.

(Lokur J)

GAFUR USMAN v. SAKHARAM TANSHEET

41 Bom L E 1193

lev ed (*Wasoodew J*) RAI CHAND GULAB CHAND
v SECRETARY OF STATE 41 Bom LR 1077=

AIR 1939 Bom 505

~~Intangible~~—Intent on to use or actual use

S 48 of the Bombay Land Revenue Code comes into operation when land is put to any use unconnected with

—S 65—Scope—Kinds of improvement—Enumeration of—If exhaustive

The right of the landlord to claim enhanced rent from his tenants is regulated by S. 83 of the Land Revenue Code and the words 'if he have the same either by

BOM. LAND REVENUE CODE (1879), S. 83.

virtue of agreement, usage or otherwise" in the saving clause of the section, cast the burden primarily on the landlord to establish the right which he claims. It is not for the tenants to establish that entry of rent attaches to their tenure (*Wassoodew, J.*) **SURYAJI RAO v. SHIVAKACHARU.**

41 Bom L.R. 951 =
A.I.R. 1939 Bom 421.

—S 83—“Or otherwise”—Construction—If *ejusdem generis* with preceding words

The words “or otherwise” cannot be interpreted as *eiusdem generis* with the words “agreement or usage” preceding them. The term “or otherwise” cannot be said to be controlled by its association with the preceding words “agreement or usage” (*Wassoodew, J.*) **SURYAJI RAO v. SHIVAKACHARU**

41 Bom L.R. 951 = A.I.R. 1939 Bom 421.

—S 83—Rent—Rate—Demand for enhanced rate—Proportion of—Just and reasonable rate—What is.

If the landlord is not hampered by agreement or ancient usage to enhance the rent, and if in accordance with the prevailing rates of the locality, the landlord in other instances has been raising the rent, S 83 of the Bombay Land Revenue Code would not exempt the tenant from yielding to the demand if it is just and reasonable having regard to the prevailing rates. The proper standard to apply under S 83 in fixing a just and reasonable rate, would be the prevailing rates in the locality particularly the rates which the landlord has levied for similar class of land let out for similar purposes (*Wassoodew, J.*) **SURYAJI RAO v. SHIVAKACHARU**

41 Bom L.R. 951 =
A.I.R. 1939 Bom 421.

—S 83—“Usage”—Meaning of—Evidence

The term “usage” in S 83 might imply practice prevailing in a locality or business under uniform or common circumstances which are similar or common prevailing for a long time as opposed to current practice (*Wassoodew, J.*) **SURYAJI RAO v. SHIVAKACHARU**

41 Bom L.R. 951 = A.I.R. 1939 Bom 421.

—Ss 85 and 86—Scope—Injunction against Government not to pay superior holder but to pay direct to purchaser of latter's rights—Competency

BOM. LAND REVENUE CODE (1879), S. 133.

It is only the registered managing inamdar who has the sole right to manage the village, *i.e.*, to recover revenue, etc. If it were not so, every co-sharer who is not registered in the Village Form No 3, as such, might file a suit to recover his own share individually from different *khatedars* in the village. Co-sharers who are not recognised as managing inamdars and whose names are not registered in the Village Form No. 3, though they are entered as sharers in the *khatawani* cannot file a suit or seek assistance against the *khatedars* directly. Their remedy is to sue the managing inamdars for an account and to recover their share in the land revenue which may have been recovered or which may have been negligently omitted to be recovered by the managing inamdars. (*Lokur, J.*) **NARHAR SONAJEE v. TRIMBAK SHRIDAR.**

41 Bom L.R. 1171.

—Ss 132 and 133—Construction and scope—Survey fee and penalty—Liability for—When arises—Public notice—If condition precedent—Burden of proof.

Ss. 132 and 133 of the Bombay Land Revenue Code that survey fee is payable by the holder of a property in the city in which survey is introduced within six months from the date of the public notice given by the Collector, and if default is committed by such holder, that is to say the survey fees are not paid within six months from the date of the public notice then the Collector is authorized to levy a penalty not exceeding one rupee for each sanad. The payment of the survey fees and the grant of a sanad seem *prima facie* to be concurrent conditions. Unless a public notice is given as provided by S 132, the Collector would not be entitled to levy a penalty under S 133. The burden to prove that the requirements of law have been complied with is clearly on the Government and it is for them to prove that every condition precedent to the levy of the survey fee

—S 133 and Sch H—Sanad—Form and contents of—Duty of Government to describe property fully by boundaries and dimensions

The sanad issued under S 133 of the Bombay Land Revenue Code are valuable documents and evidence of title and must be in proper form. Having regard to the form of Sch H of the Land Revenue Code, it is the

—Injunction against grantee of sanad—Limitation—Order granting sanad—If to be set aside—Limitation Act, Art. 14.

A sanad granted under S 133 of the Bombay Land Revenue Code is not strictly speaking in the nature of a document of title between litigating parties. It is a document affecting rights only between the crown and the grantee to whom it is issued. The object of an

and does not operate, finally as a determination of title between subjects of Government. No doubt such an order is *prima facie* evidence of title, but it is not con-

Land Revenue Code. The relation between the Government and the superior holder is not affected by the sale of the superior holder's rights. The Government cannot therefore be ordered not to pay the superior holder and to pay it to the purchaser direct. But as long as Government is not prepared to pay it to the purchaser direct the superior holder whose rights have been sold may be ordered to pay it to the purchaser. The purchaser may receive it from the treasury.

J.J.) **DATTATRAYA v. SADA.**

41 Bom L.R. 882 =

—Ss 86 and 87—Co-sharers registered as sharers in Village Form 3—Right to sue *khatedar* for share of land revenue directly—Proper remedy.

BOMBAY LAND REVENUE CODE (1879), S. 137.

clusive and may be overridden as other evidence may be

BOMBAY MUNICIPAL BOROUGH ACT (1925), S. 110

Board submits a false bill for travelling allowance

belonging to firm—Government's right as against secured creditor

Where the liquor licence granted to a firm for sale of liquor in its premises, is forfeited and sold as a result of its inability to pay the instalments due and subsequent instalments, the stocks of liquor in the bond house belonging to the firm come within the scope of S. 150 (c), Bombay Land Revenue Code, and movables in respect of which the Government have prior charge, and the claims of the Government have preference over secured creditors in whose stocks of liquor have been mortgaged (*Dunlop and Tyabji, J.*) **SECRETARY OF STATE v. PEOPLES BANK OF NORTHERN INDIA, LTD.**

BOMBAY MOTOR VEHICLES ACT (XIV OF 1935), S. 3—Scope—Vehicle liable to tax under—If also liable under Bombay Municipal Boroughs Act See BOMBAY MUNICIPAL BOROUGH ACT, S. 73 (2)

41 Bom L.R. 1249

there is no doubt that where a vehicle is kept for normal use outside the borough, an occasional user within

principle of *de minimis* is both used in the sense used within the meaning of two taxing provisions by the Bombay Municipal Corporation Act, 1935. There is no objection. (*Beaumont, J.*) **AHMEDABAD**

41 Bom L.R. 1249.

The expression "any holding which has been assessed"

in R. 91 of the Land Revenue Code, "When the basis of the levy of altered assessment is altered" (*Wassoodew, J.*) **RAI CHAND SECRETARY OF STATE.**

S. 105—Limitation—Distraint under—Conditions

BOMBAY LOCAL BOARD.

S. 4 (3)—District Local Board on goods imported in notification

fact that the remedy of the amount by filing a suit in a court cannot prevent it from exercising power conferred upon it by the Act. **ROUGH MUNICIPALITY v.**

41 Bom L.R. 1002=

A.I.R. 1939 Bom 494

S. 136—Applicability and scope—District Local Board—Administrative officer—Delivery of false

SARIFA KARUNNISSA

zeal or negligence, or other cause, exceed their powers Where the Administrative Officer of a District Local

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41 Bom L.R. 1015=

A.I.R. 1939 Bom 478.

BOMBAY PREVENTION OF ADULTERATION ACT (1925), S. 3

—S 111—Order of Sessions Judge under—Revision to High Court—Competency. See C. P. Code, S. 115.

41 Bom L.R. 105
—S 203—Scope—If affects rights.

S. 203 of the Bombay Municipal Boroughs Act only provides an alternative procedure for the recovery of taxes, and does not proceed under S. 203. The fact that the revenue does not lead to the distress under Ss. 203 and 204 of the Act. *J. SURAT BORC KARUNNISSA*

41 Bom L.R. 1002
A.I.E. 1939 Bom 494

BOMBAY PREVENTION OF ADULTERATION ACT (V OF 1925), S. 4—Applicability—Sale of articles of food etc.

It cannot be said simply as such and

—S 4 (1) (b)—Burden of proof—Admission of accused—Effect of

It is true that the food is adulterated but the burden may in effect be on the accused.

from sweetmeat shop out of frying pan—Presumption.

Where ghee alleged to be adulterated was taken from a shop where sweetmeats and pakoras were offered for sale and indeed from a frying pan in which other sweetmeats and pakoras were being made a presumption can be raised that the sweetmeats and pakoras in accused's shop had been manufactured for sale within the meaning of S. 4 (1) (b) of the Act and that he was manufacturing and offering for sale sweetmeats and pure ghee which contained impure ghee. *J. NEBHANDA PEROK.*

ACT

ing"

mon in of
Gambling Act connotes some sort of right or some sort of possession. The use is not of the kind prohibited unless it imports some measure of possession or control, for the person using as one who, although the designations of owner, occupier or keeper do not apply to him, is nevertheless some other person who is analogous to, and is of the same terms as owner, occupier or keeper in cases where a passage is a place to which have access, or are permitted to have access be an offence under S. 12 (*Broomfield, Ag. Sen, J.*) *EMPEROR v KRISHNAJI MADHUSUDAN*

41 Bom L.R. 1114

—S 3—Instruments of gaming—Marked coin

A marked coin may be an instrument of gaming. It becomes a r used as a r *Sen, J.*

BOMB. PREV. OF GAMBLING ACT (1887), S. 7.

—S. 4—"Place"—Meaning of.

The word 'place' in S. 4 has a wide meaning, and its meaning even 'place'. rough a search

warrant under the Act can be issued, and presumption under S. 7 can be drawn against the keeper of such a

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BOMBAY PREVENTION OF GAMBLING ACT (1887) S 13.

"gaming" If they do, then the presumption arises. The

these two things are proved, then the Court must presume that the house which has been entered was used as a common gaming house until the contrary is proved. But if the only evidence of the house being used as a common gaming house lies in the seizure in the house of something which is in fact although the police officers suspecting that it was there is no evidence of it is rebutted. The presumption specified in S 7 it is rebutted by proof of something other than an instrument of gaming. The section must be construed strictly, and the second event can only arise on the language of the section. When the thing which was found in the instrument of gaming and destroyed, the evidential value of *Mont, C J and Wadia, J* **EMPEROR v NATHALAL VA** (1939) Bom 421, 182 IC 669.

cards pottin ata for money stakes—If exempt under S 13

The phrase "mere skill" in S 13 of the Bombay Prevention of Gambling Act means pure skill and nothing else. A game in which there is a substantial

chance in a game is so small as to be negligible it may be reasonable to ignore it. Playing a game of cards

BOMBAY JURISDICTION ACT (1876) S 4

should remain with the local authority and not with the School Board, and hence the suit of the plaintiff lay with the Local Board. (*Davis J C and* **THE LOCAL BOARD SUKKUR v** *IS* **ILR (1939) Kar 518=** **RS 19-A I E 1939 Sind 150** *Power of appellate authority—*

Discretion—Interference

Where a teacher in the employ of a District Local Board is given a right of appeal with regard to his suspension, dismissal etc. and a statutory rule governing such a case provides that in case the appellate authority

DISTRICT LOCAL BOARD SUKKUR v NAVALRAI TOPANDAS **ILR (1939) Kar 518=182 IC 669=** **12 RS 19-A I E 1939 Sind 150**

WATAN JURISDICTION ACT (X)
Scope—Alienation of watan land
Watan Act of 1874—Refusal by
Assistant Collector to set aside—Suit in Civil Court to
set aside and for possession—If barred

refuses to set aside before the passing of Village Offices Act) retention under S 9 of that Act such refusal does not oust the jurisdiction of the Civil Court which has an inherent jurisdiction to declare void such an alienation of watan property to a stranger. A civil suit to have such alienation set aside and the land restored to the possession of the 4(a) of the Revenue Jurisdiction (*J and Lokur, J*) **WASU ISHNU**

Bom 428=184 IC 633=
41 Bom LR 578=A I E 1939 Bom 369

4 (d)—Construction and scope—Claim to be entered in the village records either as owner or as purchaser of the existing one or alternatively as purchaser of shares along with the existing one—If cognizable in Civil Court

that the Bombay Revenue Jurisdiction Act construed strictly in favour of the right of suit does not mean that it should be construed so as to make its provisions a dead letter. A claimant to have his name entered in the

liabilities of the local authority with respect to the transfers of the teachers were not vested in the School Board, and that the Legislature intended that so far as such teachers were rights as regards them and liabilities

S 4 (f)—Applicability—Alienated village—

BOM. REV. JURISDICTION ACT (1876), S. 4.

revenue at all. (*Broomfield and Macklin, J.J.*) DATTATRAYA v. SADASHIV. 41 Bom L R. 882 = A I R 1939 Bom 513

—S 4, *Proviso*—*Applicability*—*Dispute as to who is entitled to be holder of shares in village*

The proviso to S. 4 of the Bombay Revenue Jurisdiction Act relates to cases where there is a dispute as to the nature of a holding that is to say, as to whether it is exempt from the payment of land revenue or not. It does not relate to disputes as to who is entitled to be the holder. (*Broomfield and Macklin, J.J.*) DATTATRAYA v. SADASHIV. 41 Bom L R. 882 = A I R 1939 Bom 513

—S 5 (b)—*Application*—*Suit comprising main reliefs against Crown.*

S 5 (b) of the Bombay Revenue Jurisdiction Act has no application whatever to a case of a suit which is not a suit between private parties and in which some at any rate of the main reliefs are sought against the Crown. (*Broomfield and Macklin, J.J.*) DATTATRAYA v. SADASHIV. 41

A I R

—S 6—*Applicability*—*Illegal Mamladar*—*Suit for damages and barred.*

Where a Mamladar issues a warrant of distraint against the property of a person in respect of arrears of land revenue due by some other person, the former being neither the occupant of the land nor in any sense a defaulter, the action of the Mamladar is *ab initio*

is not protected by S. 6 of the Bombay Revenue Jurisdiction Act, and that section cannot be pleaded in defence to a suit for compensation and damages for illegal distress. (*Wassoodew, J.*) SHRIDHAR MAHADEO v. GODDULAL JETHMAL. 41 Bom L R. 1223

BRITISH NORTH AMERICA ACT (1867)—*Provincial Legislature—Power to delegate legislative power.*

It is now well settled that the Dominion

47 =
A I R 1939 P C 36

—S 91 (2)—*Regulation of trade*—*Power of Dominion—Natural Products (British Columbia) Act (1936)—If u*

It is now well settled that the Dominion "the regulation of trade and commerce" as a class of subject over which the Dominion has exclusive legislative powers does not give the power to regulate for legitimate provincial purposes particular trades or businesses so far as the trade or business is confined to the province. It follows that to the extent Dominion is forbidden to regulate within the province itself has the right under its legislative powers over property and civil rights within "Natural products" as defined in the Natural Products Marketing (British Columbia) Act confined to natural products produced in British Columbia. But the Act is clearly confined

BUDDHIST LAW—(Burmese).

with such products as are situated within the province. "Transportation" is confined to the passage of goods whose transport begins within the province to a destination also within the province. The pith and substance of this Act is that it is an Act to regulate particular businesses entirely within the province and it is therefore *intra vires* of the province. (*Lord Atkin.*) GEORGE WALKEM SHANNON v. LOWER MAINLAND DAIRY PRODUCTS BOARD. 180 I C. 538 = 11 R P C 182 = 2 Fed L J. 147 = A I R 1939 P C 36.

licence itself merely involves a permission to trade subject to compliance with specified conditions. A

purpose. The object would appear to be in such a case to raise a revenue for either local or provincial purposes. It cannot be an objection to a licence plus a fee that it is directed both to the regulation of trade and to the provision of revenue. The provisions in the Natural Products Marketing (British Columbia) Act

authorized instrumentalities under the power given by S. 92 (13) and (16). (*Lord Atkin.*) GEORGE WALKEM SHANNON v. LOWER MAINLAND DAIRY PRODUCTS BOARD. 180 I C. 538 = 11 R P C 182 = 2 Fed L J. 147 = A I R. 1939 P C 36.

BUDDHIST LAW (Burmese)—Adoption—Kettima adopted child—Right of inheritance—Estate of father of his adoptive father where latter having acquired

of former, needs not only to the also to property left pive child is for all born child except a child do not and ose rights arise not only from relationship but from the special claims of the natural born eldest child within the family of the parents by whom it has been begotten and conceived. Hence a child adopted in the kettima form according

share is claimed by virtue not of personal representation of his adoptive father but of an independent right of inheritance given by Burmese Buddhist Customary Law. As an out of time grandchild, he shares equally

BUDDHIST LAW—(Burmese)

—(Burmese)—*Applicability—Marriage contract*
ed between Chinese Buddhist in Burma
 — As regards validity of the marriage between Chinese

BUDDHIST LAW—(Burmese)

layman when the latter becomes a monk When paddy land is given to a monk after ordination it is given for future requirements in order that the four requisites

—(Burmese)—*Aramika sanghika property—*
Nature of—Suit to recover such property by monk on
behalf of Kyzundak—Maintainability

Aramika sanghika property is only sanghika property The right of use in vests in the monks residing in a particular for the sake of convenience the power of in a particular monk such as the priest that locality A suit under O 1 R 8 C Burmese monk who is not the presiding kyaungdak in which he resides for the recovery of

poggalika conferring rights of appointing his successor upon other persons—Such persons not exercising right—

perty in addition to mere use and enjoyment The pro

—(Burmese)—*Ecclesiastical law—Poggalika—*

also not entitled to a declaration that the lands in suit constitute aramika sanghika property for the enjoyment and benefit of the sanghas of the would convert the suit into one character (*Mya Bu Off C J*)
U ZAWTIPALA v U THATDAMA

11 R R 382—A I R 1939 Rang 21

—(Burmese)—*Auratha child—Meaning*
 The 'auratha' or 'orasa' child literally means 'child of the body' and is used in Burmese Buddhist Law as meaning an eldest born child' (*Roberts C J Mya Bu and Mosely, J J*)
MAUNG THEIN v U THA BYAW
 1939 Rang L R 341—182 I C 268—12 R R 2—
 A I R 1939 Rang 197 (F B)

—(Burmese)—*Ecclesiastical Law—Monkhood—*
Entry into order of rahans—Effect of—Divesting of
property

A Burmese Buddhist

not analogous to a ceremonial but is a mere question of fact depending upon the consideration of the question are substantially in the proposed monk
U THISEITTA v U
 B 1939 Rang 385

—(Burmese)—*Gift—Acceptance if necessary*
Dunkley J—It is nowhere stated in the Burmese Buddhist Law that a gift need not be accepted (*Mya Bu Off C J and Dunkley J*)
BISSESSAR DAS v MA YI
 179 I C 730—11 R R 346—
 A I R 1939 Rang 49

—(Burmese)—*Gift—Testamentary disposition in*
guise of gift—Validity

It is not only a death bed gift which is void under the Burmese Buddhist Law but a gift in the nature of testamentary disposition or in other words a testamentary is also void as contravenes of the Burmese no form of succession (*Mya Bu and Sharpe*,
 179 I C 946—
 A I R 1939 Rang 59
 and wife—Atetpa and

—(Burmese)—*Ecc*
Right of rahan to
Kappiya system

The Buddhist monkhood is a the only properties which a monk possess were articles which fell within the Four Requisites or Resources—ing and medicine but the ancients vicarious possession on behalf of steward who is called *kappiya* the *kappiya* may receive gifts offered to a monk after his ordination but he does not enter into possession of the property of a

or atetpa property is payin or atetpa The been a change in the corpus of the property is one of fact Where atetpa her marriage of its having the property riage and the wife in such J) MAUNG
 BA U v MA SHWE HMI A I R 1939 Rang 355
 —(Burmese)—*Husband and wife—Rights in*
jointly acquired property

BUDDHIST LAW—(Burmese).

The Burmese Buddhist husband and wife have equal rights in their hnapazon or jointly acquired property. (*As U and Mackney, J.J.*) **U SO MAUNG v. THOM.**

184 I C 622—A I R 1939 Rang. 287.

—(Burmese)—*Maintenance—Suit by wife—Maintainability*

Under Buddhist Law there is a positive duty cast on the husband to maintain his wife or wives. Where by law, a person is under a duty towards another person there is vested in that other a corresponding right to have that duty performed. Hence a suit for maintenance by Burmese Buddhist wife against her husband who is living separately from her, is maintainable. (*Dunkley, J.*) **MA SAW NWE v. U AUNG SOE**

1939 Rang. L R 527—182 I C 799—12 R R 23—A I R 1939 Rang. 223.

—(Burmese)—*Maintenance—Suit by wife—Right to get arrears.*

In a suit for maintenance by a Buddhist wife against her husband, a claim for arrears of maintenance cannot be sustained. (1872 92) L B K. 258, Rel on. (*Dunkley, J.*) **MA SAW NWE v. U AUNG SOE**

1939 Rang. L R 527—182 I C 799—12 R R 23—A I R 1939 Rang. 223.

—(Burmese)—*Marriage—Essentials*

A marriage between Burmese Buddhist is created by cohabitation coupled with intent to become husband and wife. There must also be publicity of the relationship. (*Dunkley and Wright, J.J.*) **MAUNG BA TO v. MAUN NYUN.**

A I R 1939 Rang. 442

—(Burmese)—*Marriage—Consent—Sufficiency.*

The law that is applicable to Burman Buddhist and a Burmese Buddhist woman is the same as is applicable to the case of Burmese Buddhist man and Burmese Buddhist woman. All that is required, so long as they are sui juris, is their mutual consent to live together as husband and wife. If such consent is proved then the woman would be deemed to be the legally married wife of the man. (*As U, J.*) **MA MYA TIN v. MAUNG AH LON**

183 I C 477—40 Cr. L J 796—12 R R 77—A I R 1939 Rang. 252.

—(Burmese)—*Succession—Orasa child—Death of one parent leaving only one child—Surviving parent re-marrying—Claim of child of first marriage to one quarter share as orasa child—If receives fresh period of limitation beginning from re-marriage—That child's right to one half of estate brought to re marriage by its father.*

It is quite contrary to the ordinary notions current amongst the Burmese to hold that an orasa child, who does not claim his share on the death of the father, nevertheless must be regarded as having taken the further consequence that he takes out of it. By Burmese law when after the death of the father leaving only child the surviving parent remarries, child of former marriage is entitled to claim. The child's claim to a one quarter share as orasa must be deemed to have received a fresh

—(Burmese)—*Succession—Out of time grandson*

Under the Burmese Buddhist Law an out of time grandchild or out of time grandchildren who are entitled to an equal share with an uncle or aunt in the division of the estate of the grandparents are the child or children

BURDEN OF PROOF.

of the eldest child of the grandparents. It is not essential to the success of their claim to such a share that their parent who predeceased either one or both of the grandparents was the orasa child, and all that is necessary to show is that their parent was the eldest child of the grandparents. Where the eldest child was a son and died in infancy, being survived by two brothers the elder of the two is eldest for the purpose and his son is entitled to equal share with his uncle in the estate of his grandmother. The claim to inheritance of an out of time grand-on does not arise through his acquisition of

and wearing apparel

Under the Chinese customary law the wife upon divorce is entitled to take away her jewellery and her wearing apparel with her. (*Mya Bu and Mosely, J.J.*) **MA TIN v. KO SEIN HONE**

184 I C 665—A I R 1939 Rang. 291.

—(Chinese)—*Inheritance—Illegitimate son—Rights of.*

An illegitimate son of a husband would be entitled to inherit only if the latter dies without leaving any other heir, but an illegitimate son is entitled to a half share or to an equal share with a legitimate son only if the deceased father had recognized his paternity and had also made himself responsible for his upbringing. Res-

example a casual contribution towards the expenses of a religious ceremony, cannot be regarded as denoting the assumption of responsibilities by the father for his illegitimate son's upbringing. (*Mya Bu and Mackney, J.J.*) **DAW E THIN v. MAUNG AN THIN**

1939 Rang. L R 258—180 I C 943—11 R R 446—A I R 1939 Rang. 151.

—(Chinese)—*Letters of administration—Right of widow of intestate Chinese Buddhist*

According to the Chinese Customary law, the widow's sole right in the estate in the presence of children is the right to maintenance and ultimately to funeral expenses. A right to maintenance out of the estate of the deceased is not a right to any share of the estate, it is not even a charge on the estate. She does not therefore fall within the provisions of S. 218 (1), Succession Act. Hence the widow of an intestate Chinese Buddhist deceased in Burma, succession to whose estate is governed by the Chinese Customary law, is not entitled to the grant of

Government as having been illegally collected—

a suit by a zamindar to recover a sum of money due to have been illegally collected by the Government by way of land cess from him under S. 78 of the Madras Local Boards Act he cannot get any relief unless he proves positively that the tax which has been imposed is unlawful, for this purpose it is necessary for the plaintiff to place before the Court facts which would justify the necessary inference. (*Madrasworth, J.*)

BURMA MUNICIPAL ACT (1898), S. 8.

Chinese Buddhist husband. It is the community or

Chinese customary law or the Burmese Buddhist law should govern the question as to the respective interests of the Chinese Buddhist husband and the Burmese Buddhist wife in the property held by either or both, the question as to the division of property between the parties upon divorce should be decided according to justice, equity and good conscience under S 13 (3), Burma Laws Act (*Mys Bu and Mosly, JJ*) MA TUN KO SEIN HONE. 181 I.C. 665 =

AIR 1939 Rang 291.

BURMA MUNICIPAL ACT (III OF 1898), S. 8—Rules under, R. 68—Election not properly held—Powers of Government.

One of the candidates to a Municipal election brought a petition against four others who were thought successful, on several grounds of irregularities, with the result that it came to the notice of Government that the proceedings of the faulty election were a farce and a fiasco; and consequently they proceeded under R 68 made under S 8 for the preparation and publication of the electoral roll for holding a proper election. The Judge who decided the petition however held that the objections raised were valid and all criticisms were correct and that next four persons who were on the list of candidates ought to be elected. The candidates so declared elected sued for a declaration that the order of the Government and the electoral authority were *ultra vires* and that they were duly elected members of the Municipal Committee.

Held, that once an election took place the Government could not declare it void and hold a new one. But the authorities must make a decision upon the facts as presented to them and must make their decision in good faith; and no proper election having been held the candidates could not be declared elected, and that the orders of the Government and the electoral authority were within their powers (*Roberts, C.J. and Dunkley, J.*) GOVERNMENT OF BURMA *v* ARUNACHALLAM.

AIR 1939 Rang 408.

BURMA PREVENTION OF CRIMES (YOUNG OFFENDERS) ACT (III OF 1930), S 16 (e)—Isolated crime—Detention in Borstal School—Necessity for

The Borstal Schools in Burma are introduced for training and care of young persons whose circumstances likely to enter upon a life of crime. Where it appears that the crime which a juvenile has committed is an isolated one, due to his control in a set of special circumstances, the juvenile is not shown to be subjected in his normal life to undesirable influences it is not necessary that he should be detained in a Borstal School (*M. MAUNG TIN HLAING v THE KING*).

184 I.C. 461 = AIR 1939 F

BURMA RURAL SELF GOVERNMENT ACT (IV OF 1921), S 2 (h) (ii)—"Public Market"

Meaning of "Public market" within the meaning of S 2 (h) (ii) means any place belonging to a District Council or constructed, repaired or maintained out of a District Fund where persons periodically assemble for the sale of goods, livestock or articles of food. To be a "public market" a market need not necessarily be a building constructed repaired or maintained out of a District Fund. It is sufficient if the place where persons

CALCUTTA HIGH COURT RULES (ORIGINAL SIDE), Ch. XXI, R. 17.

charged for the use or occupation of a place or a building or a stall in a public market. The fees levied for the right to expose goods or livestock for sale in the public market (*Mys Bu, J.*) AH SU *v* TARAWAY KAKA. 181 I.C. 986 = 11 R.R. 508 =

AIR 1939 Rang. 162.

—S 77—Scope.

S 77, Burma Rural Self Government Act, does not limit contracts intended to be covered by its penal provision only to such contracts as may be related to the matters mentioned in Ss 48, 50 and 56 of the Act. Where a clerk of the Circle Board rents his house to the Circle Board for use as its office without the permission in writing of the Commissioner as required by S 77, Burma Rural Self Government Act, he commits an offence under S 168, I.P. Code, read with S. 77, Burma Rural Self Government Act, as he is interested in the contract made with the Board (*Shaw, J.*) THE KING *v* MAUNG SAW HAN. 179 I.C. 716 = 40 Cr.L.J. 248 =

11 R.R. 313 = AIR 1939 Rang. 69.

CALCUTTA HIGH COURT RULES (ORIGINAL SIDE) Ch. X, R. 30 (c)—Omission to give notice—Effect of

Rule 30 (c) of Chapter X of the Original Side Rules is clear that when the report of the Referee is set down for confirmation, notice in writing should be given by the party applying to the other party or parties. If no such notice is given and the report is confirmed, the principle embodied in O 9, R 13 should be applied, (*Derbyshire, C.J. and Lord Williams, J.*) ATINDRA NATH DAS *v* DHIRENDRA NATH DAS.

43 C.W.N. 393

—Ch 17, Rr 37 and 38—Ex parte application for payment out—When may be made—Registrar's certificate showing prior applications for attachment—Procedure—Decree transferred to another Court—If remains subsisting application for attachment

An application for payment out may be made under Ch 17, R 37 and *ex parte* only where the Registrar's certificate properly so called shows no prior applications for attachment. If it shows such prior applications, the applicant must apply for rateable distribution under R 38. In such case notice, unless dispensed with by the Court, must be given to all persons whose names

The fact that there has been transferred matter for the purpose of rateable distribution it remains a subsisting application for attachment (*Amer Ali, J.*) HONGKONG AND SHANGHAI

relegated to suit

Although as a general rule, the Court would direct the person objecting to a Receiver's account on the basis of wilful neglect to bring a suit, if he is so advised, rather than deal with the matter on an application for the passing of accounts, it does not follow that in every case that procedure should be adopted. Where a subsequent Receiver is calling in question the accounts of the

CALCUTTA HIGH COURT RULES (ORIGINAL SIDE). Ch. 26. CALCUTTA MUNICIPAL ACT (1899) S 538

former Receiver and a *prima facie* case of default on the part of the latter has been established by the affidavits, it would be undesirable to force the subsequent Receiver to account on the basis of willful default.

—Ch 26—Registrar's report—C
Part of it not on point referred to him

report cannot be confirmed if the Registrar on that point

—Ch 36 R 77 (22)—Sheriff's right to poundage
—Compromise after attachment by h m under precept
—C. P. Code S 46.

Under R. 77 of Ch. XXXVI of the Rules of the Original Side of the Calcutta High Court, there are two sets of circumstances under which the Sheriff can get poundage (a) where the Sheriff levies a sum in execution and (b) where the claim in respect of which the Sheriff has taken steps to levy a sum in execution is satisfied.

multiplication of 40, 60, 80, is merely a step taken

(Sen, J) RAI KISSENJI v SRI KISSEN MACKAR
I.L.R. (1939) 2 Cal 370

—Ch 36, 1st Sch Item 58—*Money paid to sheriff*
—*Right of Accountant General to commission.*

Chap. 36, 1st Sch. Item 58 of the Rules and Orders of the Calcutta High Court entitles the Accountant General to commission only upon monies actually paid into Court. Payment to sheriff is not payment into Court. (*McNair J.*) CO OPERATIVE HINDUSTAN BANK, LTD v. TARINIBALA DASSEE

43 C W.N 600

—Ch 36, 4th S
of clum—Sheriff's re

Under Ch. 36, 4th § Side Rules the sheriff the claim of the execu does not give him a cc every man's claim or claim made in the sul means claim of the es.

—Ch 36. Item

—Counter-claim for its revocation—Permissibility

In England it is quite usual and proper to add to the defence in an action for infringement a counter claim for revocation of the Letters Patent alleged to have been infringed. But in this country, although the Statute in Force, Code, gives power to a High Court Judge to order a counter claim for revocation of a patent, the procedure in suits by way of counter claim is not governed by the same rules of procedure by which the procedure in suits by way of defence is governed. The procedure in suits by way of defence is governed by the rules of procedure by which the procedure in suits by way of defence is governed.

ACT (XVIII OF
Fribunal reject
Acquisition Act

A decision on the determination by the tribunal of
reference to compensation in
come under the definition
of the tribunal rejecting a reference made to it under
S 49(1) of the Land Acquisition Act (*Mukherjee
and Roxburgh, JJ*) MAHES MISSIR V PROVINCE
OF BENGAL. 1 L R (1939) 2 Cal 319 =

70 C.L.J. 81—AIR 1939 Cal 733
—(V OF 1911), Ss 24 and 78—*Abandonment of
acquaintance—Powers of Board.*

There is nothing in the Land Acquisition Act or the Act which prevents the acquiring a portion of the land in villages under the Act have been the Alcotia Improvement Act lays method of abandoning acquisition that Act very comprehensive Board of Trustees and their

under the provisions of S 24 of the Act (*Mukherjee and Roxburgh, JJ*) MAHESH MISSIR v PROVINCE OF BENGAL. I.L.R. (1939) 2 Cal 349=

70 O.L.J 81=AIR 1939 Cal. 733.
 —Ss 78 and 24--Abandonment of acquisition—
 Powers of Board. See CALCUTTA IMPROVEMENT
 ACT, SS 24 AND 78. 70 O.L.J 81.

CALCUTTA MUNICIPAL ACT (III OF 1899),
S. 532.

CORPORATION. 184 I C. 562-43 C W N 1173-
AIR. 1939 Cal 614.

—S 538—*Suit against corporation—Necessity for notice*

CALCUTTA MUNICIPAL ACT (1923), S 127.

poration, any Municipal officer or servant. Therefore for a suit against the corporation notice contemplated by S. 538 is only required if the suit is in respect of acts purporting to be done under the Act. (*Lert Williams, J.*) **BANDO & CO v. CALCUTTA CORPORATION.**

181 I.C. 562=43 C.W.N. 1173=

A.I.R. 1939 Cal 614

—(III OF 1923), S 127—Part of building ordinarily let and another part not ordinarily let—Method of valuation.

S. 127 of the Calcutta Municipal Act classifies all buildings as falling within one or other of two mutually exclusive categories. Each building is treated as a unit of valuation and its value must be ascertained in conformity with one or other of the two prescribed methods. It cannot be valued as to one part under paragraph (a)

part
only
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portion so separately assessed is to be deemed a separate building. Where the Executive of be treated as a single building forming a of assessment. Of a building as to one half ordinarily let and as to one half not ordinarily let it can not be predicated that it is ordinarily let, for only a part of it is ordinarily let. But it can be predicated of it that it is not ordinarily let if only a part of it is ordinarily let, for the whole of it is not ordinarily let. The test must be applied to every building as a whole and one or other method of valuation must be applied to it as a whole. There may possibly be cases where the portion ordinarily let or the portion not ordinarily let is so

I.L.R. (

—S 133—"Valuation"—Meaning of See CALCUTTA MUNICIPAL ACT, SS 141 AND 139

43 C.W.N. 789

—Ss 141 and 139—Appeal to Small Cause Court—Question of liability to assessment—Court to deal with.

In an appeal under S 141 of the Calcutta Municipal Act, the Small Cause Court has jurisdiction only with the quantum of the assessment but also with the question of liability to assessment.

Per *Nasim Ali, J.*—There is nothing in S. 139 of the Calcutta Municipal Act to limit the meaning of the word "valuation" to the quantum of valuation only. It includes the whole process of valuing as well (*Derbyshire, C.J.* and *Nasim Ali, J.*) **PROVINCE OF BENGAL v. CORPORATION OF CALCUTTA.**

I.L.R. (1939) 2 Cal 23=43 C.W.N.

—Ss 141 and 139—Objection as to liability to assessment—Jurisdiction of Small Cause Court

The word "valuation" in S 139 may mean, (1) estimated value, (2) the act or process of valuing. It is nothing in this section to limit the meaning of the word "valuation" to the quantum of valuation or includes the whole process of valuing as well

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CALCUTTA MUNICIPAL ACT (1923), S. 498

the Small Cause Court Judge has jurisdiction to hear objections not merely as to quantum of the assessment but as to liability to assessment also (*Derbyshire, C.J.* and *Nasim Ali, J.*) **GOVERNMENT OF BENGAL v. CORPORATION OF CALCUTTA.** A.I.R. 1939 Cal 706.

—S 363—Erection of portion of building without sanction—Order of demolition by Magistrate—Power of latter to enquire into propriety of withholding sanction

The erection of a portion of a building without obtaining the written permission of the Corporation is unlawful and the Corporation can under S 363 of the Calcutta Municipal Act obtain from the Municipal Magistrate an order for the demolition of such erection. The section does not give the Magistrate any power to enquire as to whether the sanction was rightly withheld or not. (*Jack, J.*) **TARAK CHANDRA DAS v. CHIEF EXECUTIVE OFFICER, CORPORATION OF CALCUTTA.** 180 I.C. 907=11 R.C. 757=68 C.L.J. 476=

A.I.R. 1939 Cal 285

—S 363—Reconstruction of building without sanction—Power of Magistrate to order demolition

The mag. for that has been operation of a

building or alteration of or addition to the existing building within the meaning of the Act (*Derbyshire, C.J.* and *Bartley, J.*) **SHAIK BADLI MEAH v. CORPORATION OF CALCUTTA.** 180 I.C. 824=

11 R.C. 756=40 C.L.J. 528=68 C.L.J. 478=

A.I.R. 1939 Cal 289.

—S 478 (17)—Bye law 2 issued under Bengal Act 111 of 1899—Conviction for its violation—When sustainable.

In order to sustain a conviction in respect of a viola-

actually deposited building materials, etc. in a public street or on any land vested in the corporation and that

made by a contractor who was engaged in building a house for the person in whose favour a licence for deposit of building materials was issued by the corporation, and there is nothing to indicate that the

PORATION OF CALCUTTA

—S 498 and Sch. XVII, R. 62—Group of permission to build—Effect of—Permission under Sch XVII

A written permission by the corporation for a building is not in itself conclusive of the requirements of the Act have been satisfied in respect of that building. It does not follow that

CALCUTTA MUNICIPAL ACT (1923), Sch XVII, R. 62

Committee granting permission to build—Revocation—Power of Committee before issue of permission

Under S 498 of the Calcutta Municipal Act, every written permission granted under the Act must be signed by the Executive officer, and if there has been any delegation by the Executive officer under S 12 (3) by the Municipal officer to whom the delegation has been made. In other words, the grant does not become effective until there is a properly signed written permission. If, therefore, the Building Standing Committee

tion (B N Rau, J) SHEIKH NIZAMUDDIN v.

CALCUTTA MUNICIPAL ACT, S. 498 1923 M L J. 311.

CALCUTTA POLICE ACT (IV OF 1866), S 45—Onus of proof.

In a case under S 45 the onus clearly lies upon the prosecution to show that the house in which the accused was found was a common gaming house as defined in S. 3 of the Act. In order to satisfy the requirements of this section it would be for the prosecution to show that instruments of gaming were kept or used in that house for the profit or gain of the person, owning,

CANTONMENTS ACT (II OF 1924) Ss 55 (2) and 63 (8)—Invalid constitution of the Assessment committee—If cured by S 55 (2)—Assessment proceeds—Legality

Where the Cantonment Board appointed an Assessment Committee under S 63 (3) of the Cantonments Act to which nominations were permitted to be made by persons not belonging to the Cantonment Board, the Committee is not a validly constituted one. But the defect is not cured by S 55 (2) of the Act for the words 'Committee of a Board' occurring therein means only a Committee appointed by the Cantonment Board under S 44 (1) (c) of the Act. Hence the assessment

assessment—Illegality or irregularity—Condonation

When a list fails to show that which the law expressly directs, it should show, there is an illegality and not merely an irregularity such as might be condoned under S 104 of the Cantonments Act. Hence the assessment to enter in the list framed under S. 66 of the Act, the amount of the assessment affecting the merits of the case (CANTONMENT BOARD, NASIRABAD)

S 84 (2)—Reference under—Security Procedure

A single reference under S 84 (2) of the Car Act by the Income tax Officer in respect of appeals is irregular. He should either make references as there are appeals, or should

CANTONMENTS ACT (1924), S. 106

reference in one of them and then decide the rest in accordance with the answer received (Norman, J.C.S.)

CANTONMENT BOARD, NASIRABAD v. SHRI NARAIN, 1939 A M L J. 1.

S 88—Suit for refund of tax levied—Jurisdiction of Civil Court

In cases where the plaintiff is demanding a refund of the amount of assessment or tax levied under the Cantonments Act, if the Court is of opinion that the tax is *ultra vires* of the Act, then the Civil Court will have jurisdiction. If however the Court is of opinion that

A R 1933 LRU 141.

S 99 (2)—If a tax on property and not a tax on the tax levied in respect of shortage of revenue available, then, NASIRABAD M L J. 1

S 101—Illegality and irregularity—Condonation—Test See CANTONMENTS ACT, Ss 66 AND 104 1939 A M L J. 1.

S 106 (c)—If ultra vires—Government of India Act, 1919, Ss 45-A and 84 (2)—India and Burma (Transitory Provisions) Order, 1937 and Government of India (Adaptation of Indian Laws) Order, 1937—Effect of.

Under the Devolution Rules framed under the Government of India Act, 1919 'cantonments' was a central subject and so were criminal law including procedure and all other matters not included among provincial subjects. On the other hand, 'administration of justice' was a provincial subject and in express terms included constitution, powers maintenance and organisation of Civil and Criminal Courts subject to legislation by the Indian Legislature as regards Courts of criminal jurisdiction. The Indian Legislature passed an enactment, the Cantonments Act (II of 1924) S 106 (c) of which provided for the formation of cantonment funds to which were to be credited all fines recovered from persons convicted of certain offences committed within each cantonment. The United Provinces instituted a suit against the Central Government represented by the Governor General in Council for a declaration that S 106 (c) of the Cantonments Act was *ultra vires* the

recover and adjust all such sums wrongly credited to the cantonment funds since 1924

Held, (1) that under the Devolution Rules fines imposed by Criminal Courts could be properly credited to cantonment funds.

CANTONMENTS (HOUSE ACCOMMODATION) ACT (1923). S. 7.

commencement of Part III of the Constitution Act, under the India and Burma (Transitory Provisions) Order, 1937, para. 4 (a), such fees credited to the cantonment funds

(Gayer C. J., Sulaiman and Varsachariar, JJ.)
THE UNITED PROVINCES & THE GOVERNOR
GENERAL IN COUNCIL. 1939 P O R 121 =

11 E F C 44 (2) = 180 L C 863 = 5 B R 554 =
40 Cr L J 493 = 1939 O L R 246 = 2 Fed L J 123 =
50 L W 209 = 1939 P W N 555 =
1939 M W N 750 = A I R 1939 F C 58 =
(1939) 2 M L J (Supp) 1.

CANTONMENTS (HOUSE ACCOMMODATION) ACT (VI OF 1923, S. 7—Reasonable rent—Criterion.

The best criterion for arriving at a reasonable figure of rent of a house is to find out the rent of bungalows in the locality. (*Mir Ahmad, J*) ATTAR SINGH v SECRETARY OF STATE 182 L C 566 =

12 E Pesh 6 = A I R 1939 Pesh 22
—S. 15—Landlord contesting question of rent—Provision for payment to him of rent fixed by officer—Need for.

There should be some provision in the Act that where a house has been taken over and the question of rent is controlled by the landlord the amount fixed by the officer commanding should be paid to the landlord without prejudice to his right to fight in Court the question of the enhancement of the rate of rent (*Mir Ahmad, J*)
ATTAR SINGH v SECRETARY OF STATE
182 L C 566 = 12 E Pesh 6 = A I R 1939 Pesh. 22.

CARRIAGE OF GOODS BY SEA ACT (XXVI OF 1925), S. 2, Art IV, B. 2 (q)—Applicability and scope—Lighter transporting goods from wharf to steamer lying at anchor in the roads—Loss of goods due to fault of tidal—Liability of owners of lighter.

The rules made under the Carriage of Goods by Sea Act of 1925, apply by reason of S. 2 of that Act, only to the carriage of goods by sea in ships carrying goods from any port in British India to any other port whether in or outside British India. A lighter transporting goods from the wharf to a steamer lying at anchor in the roads does not come within the purview of S. 2 of the Act. Even if the lighter be held to be a "ship" cl (g) of R 2 of Art IV of the schedule to that Act would make the owners of the lighter liable for the loss caused by the fault of their agent, the tidal. A common carrier is liable for the loss of goods entrusted to him for carriage unless the loss be due to an act of God or of the King's Enemies. (*Wadsworth J*) DHANAMMA v GORO MANDAL CO., LTD. COCANADA 1939 M W N 216 = 49 L W 341 = A I R 1939 Mad 401 = (1939) 1 M L J 235

CARRIER—Common carrier—Motor bus service essentially intended for carriage of passengers—Proprietor of—If common carrier in respect of goods—Consignment of goods handed to conductor of bus for delivery to person calling for it at specified place—Liability for loss.

The proprietor of a motor bus service, which is essentially intended for the carrying of passengers and their luggage or goods, if any cannot be regarded as a common carrier so far as transport of goods is concerned. If the conductor of a bus belonging to such a service on his own responsibility, accepts a consignment of goods from a person other than a passenger under-

O P. COURTS ACT (1917), S. 14.

taking to deliver it to a person who would call for the same at a specified place, and takes payment for such transport, issuing a ticket to the consignor in the same way as to a passenger who has luggage, and the consignor cannot be treated as a common carrier for the act of the proprietor is one between the proprietor and the person to whom he is not a party. (*Abdul Ghani J.*) MADDAPPA v. FIRM OF RANIAH SETTY AND SRIKANTA SETTY 17 Mys L J 284

CASTE DISABILITIES REMOVAL ACT (XXI OF 1850)—Change of religion—Effect on guardianship of minor children—Inapplicability of rule in Jammu and Kashmir. See HINDU LAW—GUARDIANSHIP. 41 P L R J. & K. 33.

CASTE PANCHAYAT—Defamation by ex communication—See PENAL CODE, S. 499 EXCP P 9. 49 L W 268 = 1939 M W N 127.

CATTLE TRESPASS ACT (I OF 1871), S. 10—Applicability—Proprietor of private protected forest or embankment—If "cultivator or occupier"

The proprietor of a private protected forest or of an embankment is an occupier of land within the meaning of S. 10 of the Cattle Tresspass Act. There is no reason why he should not be regarded as the occupier of land which he has reserved for afforestation. Similarly the occupier of land used as an embankment who builds or maintains an embankment. In either case, S. 10 applies to cattle doing damage, whether in the forest or in the embankment (*Courtney Terrell, C J and James, J*)
GOPAL SETHI v HRUDANAN MAHAPATRA.

1939 P W N 295 = 20 P L T 340.
—S. 10—Seizure—Legality—Extent of damage—Relevancy—See CATTLE TRESPASS ACT, SS. 22 AND

or detention of the cattle was illegal, that is to say, the seizure was not in accordance with S. 10, Cattle Tresspass Act. Where the question is whether the cattle were doing damage to the crop, the fact that the damage was likely to be small, cannot render the seizure illegal. If in law one is entitled to impound the cattle, the smallness of the damage or any consequent unreasonableness of the impounding, is no ground for a finding of compensation (*Hamilton, J*) RAM CHANDKA SINGH v. ENPPROR 1939 O W N 150 = 1939 A W R. (C C) 56 = 1939 O A 289 = 1939 A Cr C 81.

CENTRAL PROVINCES ACTS

- O P Courts Act (I of 1917)
- " Debt Conciliation Act (II of 1933)
- " Excise Act (I of 1915)
- " Land Revenue Act XVIII of 1881)
- " (II of 1917)
- " Local Funds Act (1933)
- " Motor Vehicle Taxation Act
- " Motor Vehicle Rules (1927)
- " Municipalities Act (II of 1922)
- " Protection of Debtors Act (1937)
- " Reduction of Interest Act (1936)
- " Tenancy Act (I of 1920)
- O P and Berar Prohibition Act (1938)
- " Sales of Motor Spirit and
- " Lubricants Taxation Act 1938

CENTRAL PROVINCES COURTS ACT (I OF 1917) Ss 14 and 26—District Judge and Additional District

C. P. DEBT CONCILIATION ACT (1933), S. 9.

C. P. DEBT CONCILIATION ACT (1933), S. 16.

and verification—*Precision as to, if mandatorily required, if can be interfered with*

The only reason why S. 9-A of the Central Provinces Debt Conciliation Act is not embodied in S. 8 (1) is because it refers also to S. 9 (1) of the Act and so was put after both sections, but its effect clearly is that S. 8 must be read along with S. 9-A. A statement without signature or verification as prescribed is not in proper form. The word 'shall' used in S. 9-A is mandatory. S. 18 clearly provides that no appeal or application for revision shall lie against any order passed by a Board, and when the Civil Court finds that the order though

ability

decree is binding on the parties and they cannot go behind it. The filing of a separate civil suit to enforce the settlement is unnecessary and not contemplated by the Act. The Collector could act on the agreement and effect the necessary partition. (*Gruer, J.*) SHANKAR-DAS v. NANDLAL 1939 N.L.J. 85.

—S. 12—Agreement to settle debt—Failure to carry out—Suit on original debt—Maintainability. See CONTRACT ACT, S. 62 AND CENTRAL PROVINCES DEBT CONCILIATION ACT, S. 12 1939 N.L.J. 256

—S. 12 and Civil Procedure Code S. 47 (2)—Settlement of debt—Promise to transfer property—Registered agreement—Non compliance with—Suit for specific performance—Relief—Basis.

Where a settlement of a debt was effected by a registered agreement involving the transfer of property and on a failure to so transfer the property a suit was filed for specific performance of the agreement it was held that the Court was justified in operating under the powers conferred by S. 47 (2), C. P. Code, alternatively under its inherent powers and treating the suit as a proceeding to enforce the agreement as a decree of Civil Court and giving relief to the plaintiff. (*Stone, C. J. and Bose, J.*) ABDUL RASHID KHAN v. SINGHAI BANSILAL 1939 N.L.J. 500

—Ss 12 and 13—Scope and applicability of—Jurisdiction of Civil Courts—When arises

The settlements contemplated by the Central Provinces Debt Conciliation Act are not within their scope and payment of the debts can be made either in cash or in kind. 'amounts' due are made payable in cash. Provisions of S. 13 are attracted and in that case the jurisdiction of the Civil Courts does not arise until the provisions of S. 13 (3) of the Act have been complied with but if the amounts are payable in kind, then the agreement is enforceable as a decree by the Civil Court.

the creditors who accept the 40 p.c. of the total liability

their remedy by suit in the usual way. (*Stone, C. J. and Bose, J.*) SADASHO RAO v. KOPCHAND.

184 I.C. 719 = 1939 N.L.J. 142 =

A.I.R. 1939 Nag 136.

—S. 13 and Berar Land Revenue Code (1928) S. 164 (c)—Sale under S. 13 of the former Act read with S. 164 (c) of Berar Land Revenue Code—Creditor or his agent, if prohibited from bidding.

Where a sale is held under S. 13 of the Debt Conciliation Act read with Cl. (c) of S. 164 of the Berar Land Revenue Code there is nothing in the above two or his put up AO

—S. 15—Certificate in respect of the personal a deceased coparcener—Validity. See PROVINCES DEBT CONCILIATION ACT, AND 15—'DEBT'. 1939 N.L.J. 458.

15 and 16—Certificate under S. 15—Finding as to reasonableness of settlement offered—If can be re-agitated in Civil Court

The Debt Conciliation Board has jurisdiction to decide whether the offers made for the settlement of the debt were reasonable or not and when once it has issued a certificate under S. 15 of the Debt Conciliation Act stating that the creditor had refused to accept a reasonable offer, the Civil Court is powerless to go into the question whether the offer was reasonable or not. Such an enquiry is excluded by S. 16 (a) (ii) of the Act. (*Gruer, J.*) GOVINDRAMJI v. GUNAJI DOMAJI 1939 N.L.J. 322.

—Ss. 15 and 21—Execution sale prior to application under Debt Conciliation Act—Confirmation, if can be interfered with under Ss. 15 and 21

Neither S. 15 nor S. 21 of the Central Provinces Debt Conciliation Act affects the power of a Civil Court under O. 21, R. 92, C. P. Code, to confirm a sale held in execution proceedings when such sale has taken place before an application under S. 4 of the above Act has been made to the Debt Conciliation Board. (*Niyogi and Bose, JJ.*) AKHARI ALI v. SETH SOBHARAM. 1939 N.L.J. 283 = A.I.R. 1939 Nag. 282

—Ss 15 and 12—Scope and effect of.

Ss 15 and 12 (1) of the Debt Conciliation Act must be read together. If the 40 per cent. rule did not apply, the alternative stand could not be taken that S. 15 could be independently brought into action against any individual.

—S. 10 did not apply. (*Govindramji v. Govindramji*) 1939 N.L.J. 322

'such agreement'

has ceased to subsist' meaning of
The words 'such agreement has ceased to subsist' occurring in S. 15 (3) of the Debt Conciliation Act cannot mean that an agreement has ceased to be an agreement.

examine the reasons for issue of certificate under S. 15

The intention of the Legislature in S. 16 of Central Provinces Debt Conciliation Act was to

—Ss. 12 and 15—Some of the creditors not agreeing to accept conciliation—Power to issue certificate against them—Jurisdiction—Limits

C P DEBT CONCILIATION ACT (1933), S 16

the Civil Courts from examining the reasons, whether right or wrong which induced the Debt Conciliation Board to issue a certificate under S 15 of the Act. It may be that if fraud was practised on the Board the Civil Courts could set the matters right. Where in spite of the allegations of a creditor a certificate is issued under S 15 it could not be questioned by the civil court. (*Gruer, J*) **JANBA DAYAKAM PARDESHI v MANNOOKASHIRAM KIRAD** 1939 N L J 486 = AIR 1939 Nag 312

—S 16 (1)—*Intention and scope of—Suit by creditor prior to debtor's application—Proper disposal*

Giving the best construction to Ss 16 21 and 23 of the Central Provinces Debt Conciliation Act the true intent appears to be as follows. Where in point of fact proceedings are pending before a Debt Conciliator on Board at the time of the presentation of a plaint the Court has no jurisdiction to dispose of the matter. If, however thereafter the proceedings before the Debt Conciliator on Board terminate without a settlement of that debt, the power of the Court to deal with the suit re-

immediately after the application terminated and no new Court fee will

C P LAND REVENUE ACT (1881), S 65

become one 'in respect of that debt' and so could not be stayed under S 21 of the C P Debt Conciliation Act. A suit for a declaration and possession of fields conveyed under a sale by a mortgagor in satisfaction of the debt due is not such a suit that could be stayed under S 21 when the mortgagor subsequently applies for conciliation of his suit and shows the vendee as a creditor therein. (*Gruer, J*) **HIRABAN v LAXMAN** 1938 N L J 475

—S 21—*Suspension of proceedings in Civil Court—When takes place*

The suspension of proceedings contemplated by S 21 of the Central Provinces Debt Conciliation Act does not take place until by the production of the appropriate certificate the Civil Court has been informed of the pendency of the proceedings before the Board. (*Stone, C J and Bose, J*) **MAHEMAJI v CHANDRABHAN** 1939 N L J 451

—S 21, Proviso—*Nature of agreement referred to—Conciliation of debt by transfer of land—If contemplated by the Act*

by S 12 of the Act referred to in the conciliation by the Act that may be law. (*A L HIRABAN*) 1938 N L J 472

CENTRAL PROVINCES EXCISE ACT (XVIII OF 1881) S 65 A (5) AND (7)

—*Meaning of "excisable article"—Liquor includes spirit and under S 2 (13) of the same Act "excisable article" means any liquor or intoxicating drug. Therefore diluted denatured spirit is an excisable article under the Act. (Pollock, J) AHMAD KHAN v EMPEROR 1939 N L J 75*

CENTRAL PROVINCES LAND REVENUE ACT (XVIII OF 1881) S 65 A (5) AND (7)—Construction and scope—Protected thikadar in Sambalpur District—Failure to pay thika jama—Liability to ejection on ground of—In accordance with any law for the time being in force—Meaning of

It is impossible to construe S 65 A (7) of the C P Land Revenue Act as giving the landlord a right to eject the protected thikadar merely for non payment of thika jama or upon the grounds mentioned in cl (5) of the sub section. S 65 A (5) clearly contemplates that the liability of a protected thikadar is something less than the liability of an unprotected thikadar to be so ejected. A thikadar, gaontia or farmer in the Sambalpur District holds an interest very similar to that of a permanent tenure. There can be no ejectment for non payment of rent unless the lease or agreement contains something in the nature of a proviso for re entry. A landlord in India has no common law right to eject a tenure holder for non payment of rent. His right to eject depends in each case upon the terms of the agreement of lease. In the absence of a right to eject the tenure holder given by the agreement or lease, mere failure to pay the thika jama does not entitle the land owner to eject the thikadar. The form of S 65 A (7) suggests that the legislature intended to 'save existing rights rather than to create new rights. All that the sub section does is to save for the landlord any rights which he might have, in accordance with the law

—S 18—*Interference by Civil Court—Order technically correct but harsh. See C P DEBT CONCILIATION ACT S 18* 1939 N L J 171

—S 19—*Agreement before the Board—Subsequent unforeseen events lightening burden of debtor—Effect—Power to revise agreement*

Where an agreement has been entered into before the

—S 21—*Applicability—Passing of foreclosure decree—Effect—Execution if affected by proceedings under Debt Conciliation Act*

With the passing of a final foreclosure decree, the debt comes to an end. The decree is not a money decree and cannot be regarded as a debt of record so that the decree is not a debt at all. The old debt has merged in the decree and hence no debt left which can confer jurisdiction on a Debt Conciliation Board. An execution of such decree could proceed unhampered by S 21 of the Central Provinces Debt Conciliation Act. (*Stone, C J and Bose, J*) **MAHEMAJI v CHANDRABHAN** 1939 N L J 451

—S 21—*In respect of any debt—A debt having for its origin the conciliation of a debt—S 21 of Act, if can be stayed*

Simply because the transaction of sale in origin in the settlement of a debt, the suit

C. P. LAND REVENUE ACT (1881), S. 152

ejected in the absence of a provision to that effect in the lease or agreement. The words 'decree for ejectment passed in accordance with any law for the time being in force,' cannot be construed as meaning a decree for ejectment in accordance with the law of procedure for the time being in force (*Harris, C. J. Wort and Dhillon JJ*) LAL SADANATH SINGH v. MADAN MOHAN SAHU 18 Pat 500 1907 F.C. 201

12 B.P. 48-20 Pat L.

1939 P.W.N. 407-A.I.R.

—S. 152—Applicability—f.

Court—Suits by lambardar for revenue paid by him on behalf of co-sharers as zabti bhogra—Jurisdiction of Civil Court—Contract Act, S. 69

Clause (10), S. 152, deals with claims arising from actual collections or from the processes to enforce the realization of arrears of revenue or arrears of sums realizable as revenue. To come within this clause, the matter complained of and which gives rise to the suit must actually be connected with or arise out of an actual collection or some process for the recovery of arrears of revenue. The cause of action must be intimately connected with the collection or with the process for the recovery of revenue. Where a lambardar pays the whole revenue and then sues the co-sharers for amounts paid by him on their behalf as zabti bhogra his claim is not one connected with or arising out of actual collection or anything connected with collection, but rather from payment made by him to co-sharers' use, and in view of S. 33 which presupposes that Civil Courts have jurisdiction to try suits by lambardars for arrears of revenue payable through them by the proprietors whom they represent S. 152 is not applicable. Such a suit falls under S. 69, Contract Act and can be entertained by Civil Courts (*Harris, C. J. and Wort, J.*) HARIHAR DORA v. UPENDRA PATI. A.I.R. 1939 Pat. 497

—(II OF 1917) and Central Provinces Tenancy Act—'Land' as used in the Acts, if includes abadi

The term 'land' is not used in its ordinary sense in the Central Provinces Land Revenue and Tenancy Acts and as used in the Act does not include house sites in the abadi (*Stone, C. J. and Bose, J.*) GANGAPRASAD v. ITWAPESINGH 1939 N.L.J. 429-A.I.B. 1939 Nag. 267

—S. 23 and C. P. Tenancy Act—Procedure for proceedings under S. 24 of order of ejectment—Necessity

The word 'service' in Revenue Act implies and is more tendering or delivery means securing that the person gives an acknowledgment of this could not be done so resorted to. It is of the essence of proceedings S. 24, C. P. Tenancy Act, especially, that should be apprised of the order of ejectment date fixed for paying up the arrears to avoid tendering of the notice cannot secure this (*C.*) SARJIA TUKARAM v. ISHWARGIR 1939 N.L.J. 358.

—S. 25—What is condoned by

S. 25 of the C. P. Land Revenue Act, does not condone any irregularity in respect of service of notices but only in respect of immaterial errors in designation of persons or description of property (*Burton, F. C.*) SARJIA TUKARAM v. ISHWARGIR 1939 N.L.J. 358.

—S. 39—Revision when remedy by way of appeal was open—If and when entertainable

C. P. LAND REVENUE ACT (1917), S. 157.

S. 39 of the C. P. Land Revenue Act does not provide for an application being made for revision in lieu of an appeal or otherwise. The initiative is left with the Revenue Officer to revise an order or not. Ordinarily the powers of revision would not be used where an appeal could have been filed, but was not in fact filed, unless good reasons are given for not so doing.

appealable.

An appellate Court has no jurisdiction to entertain an appeal against an order rejecting an application for revision (*A. L. Binner, F. C.*) DAHBA JAGANNATH JOSHI v. NARAYAN GOVINDRA SHAHADANI. 1938 N.L.J. 472.

—S. 40—Review—Grounds—Importance of question included.

No principles are laid down in S. 40 of the Central Provinces Land Revenue Act to regulate in what cases review may be allowed. The practice seems to suggest that the test in such cases is the importance of the question involved (*Burton, F. C.*) KALKAPRASAD v. THAKUR BUDHASING. 1939 N.L.J. 293.

—S. 68 (3)—Khudkasht land subject to mortgage—If can be recorded as

Though khudkasht land is subject to a mortgage it can be recorded as *ur* land if it otherwise satisfies the conditions laid down in sub S. (3) of S. 68 of the Central Provinces Land Revenue Act (*Burton, F. C.*) BALMUKUND v. DAULAT 1939 N.L.J. 499

—S. 80—Applicability

S. 80 of the Central Provinces Land Revenue Act deals with settlement decisions only and does not apply to year to year khasra entries made by the patwari. (*Gruer, J.*) BABA RAMCHANDRA KOMTI v. KONDOD JAGNA WADHAI 1939 N.L.J. 496.

—Ss. 128 and 146—Proclamation of sale not in accordance with Act—Effect

Where the proclamation for sale was issued as for a sale under C. P. Code, it is not in any way a compliance with R. 17 of the rules framed under S. 128, Central Provinces Land Revenue Act. It is not an informality curable under S. 25 of the Act. Where there is no

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the purchaser thereafter, the defaulter is within time if he deposits his amount within 15 days of payment by the purchaser. (*Burton, F. C.*) KALKAPRASAD v. THAKUR BUDHASING 1939 N.L.J. 293.

—S. 157—Payment by Saddar lambardar—Sale of co-sharer's land—If free from encumbrances—of right conveyed

If a Saddar lambardar fails to get in the land revenue to the Government, he

C P, TENANCY ACT (1920), S, 12

ed transfer has been waived (*Burton, F C*) GOVIND

RAO v KRIPAT

—Ss 12

tion of S 12—

102

—S 13—*Landlord—Who is—Basis of decision*

In deciding who is the landlord of the tenant for the purposes of S 13 of the C P Tenancy Act the Revenue Court should have regard solely to the

—S 21—*Ejectment with reference to more than one holding—Procedure to be adopted by the Revenue Officer*

As S 24 (2) of the Central Pro Ten Act empowers a Revenue Officer to deal with only one holding of a tenant on the receipt of a decree for ejectment from a civil Court where the decree and ejectment order relate to more than one holding the Revenue Officer could not legally proceed with the ejectment under S 24 and he must refer the order back to the civil Court concerned (*Burton, F C*)

—S 24—Proceeds have been appraised of LAND REVENUE ACT, S 24

—S 24—*Service*

the basis of first notice when a second one has been issued

—*Legality*

It is essential for the procedure the Central Provinces Tenancy Act shall be served upon order for ejectment is passed notice which was not properly had been issued the procedure shall to the tenant (*Burton F v SHRIRAM DALPAT*

1939 N L J 291

C P TENANCY ACT (1920), S 93

—Ss 46 47 and 48—*Transfer in contravention of S 46 47 48—remedy—Failure to*

int in contravention of void but voidable by the landlord whose proper and only remedy is to proceed in the Revenue Court under Ss 47 and 48 But if such a voidable transfer is not avoided by persons who can avoid it under S 47, it would be a perfectly good

favour of the of defeating rights of the mortgagee (*Stone, C J and Clarke J*) JABBARSHAH v KANCHHEDI LAL 182 I C 239=11 E N 514=1939 N L J 308=A I R 1939 Nag 166

—S 49—*Land declared six between date of mortgage and suit—Effect—Right to benefit conferred by S 49—If can be claimed in execution—C P Code, S 74 and O 21, Rr 97 and 98*

Any rights conferred upon the mortgagor subsequent to the mortgage are normally subject to the mortgage But where a statute intervenes and creates rights the

debtor to resist execution for any just and sufficient cause Id certainly come result the decree-prietary rights in rights that have *Stone C J and Bose*

1939 Nag 287

—Ss 49 and 110—*Scope and effect of—Rights of*

holding in conformity with the provisions of S 35 of the Central Provinces Tenancy Act, on an abandonment by a widow and a reversioner claims possession on the

the landlord when a surrender is impeached does not lie on him when he has come into possession by operation of law (*Niyogi, J*) MURLIDHAR v MAJARI LAL

1939 N L J 60

A I R 1939 Nag 230

—S 89—*Surrender—Registration, if necessary for its validity*

not be a valid surrender of an absolute occupancy holding without a registered on though the landlord and the tenant are (*Stone C J and Bose J*) KASHI PRASAD 1939 N L J 216

Proviso—*Scope of—When comes into*

operation

The proviso to S 93 of the Central Provinces Tenancy Act is not to be interpreted as requiring that, on the mere raising of objections on the basis of title by

C. P. TENANCY ACT (1920), S. 110.

a non-applicant, the case necessarily must be postponed for the decision of those objections by the Civil Court. The proviso only means that in the face of a clear and genuine dispute existing as to the right of the parties in the tenancy, it must be referred to the Civil Court (*Burton, F.C.*) **SARSWATIBAI v. RAMCHANDRA**
1939 N.L.J. 460

—S. 110—Scope and effect of—Rights of permanent lessee of *sir* fields—How affected. See **C. P. TENANCY ACT, SS 49 AND 110. SCOPE AND EFFECT OF.**
1939 N.L.J. 347

CENTRAL PROVINCES AND BEAR PROHIBITION ACT (1938), S. 19—Interpretation—Bond in lieu of sentence—Validity.

The execution of a bond as contemplated by S. 19 of the Central Provinces and Bear Prohibition Act is in addition to and not in lieu of the sentence. (*Pollock, J.*) **PROVINCIAL GOVERNMENT v. HARI**
1939 N.L.J. 289

CERTIORARI—Writ of—Discretion of High Court—Decision of Hindu Religious Endowments Board in respect of distribution of *theertham* in temple and temple honours—If decision on legal right—Writ—If can issue. See **MADRAS HINDU RELIGIOUS ENDOWMENTS ACT, S. 18
1939 M.W.N. 442.**

—Writ of—High Court's power—Order of Madras Debt Conciliation Board scaling down debt in case where it has no jurisdiction to do so—Issue of writ quashing order. See **MADRAS DEBT CONCILIATION ACT, SS 4 AND 17.** (1939) 2 M.L.J. 789.

—Writ of—Jurisdiction of High Court to issue—Decision of Chief Judge of Bombay Small Causes Court—Decision in Municipal appeal—High Court's power to issue writ—Grounds for. See **BOMBAY CITY MUNICIPAL ACT, SS 217 AND 219** 41 Bom.L.R. 984 **CHARGE** See **T. P. ACT SS 55 AND 100**

CHILD MARRIAGE RESTRAINT ACT (XIX OF 1929)—Offence beyond British India—Charged in British India—Sanction of Local Government or certificate of political agent—Necessity for—Cr. P. Code S. 188

A charge in respect of an offence under the Child Marriage Restraint Act alleged to have been committed in French territory cannot be inquired into in British India except on the certificate of the Political Agent or the sanction of the Local Government, as required by the proviso to S. 188, Cr. P. Code. There is nothing to the contrary in the Child Marriage Restraint Act (*Lakshmana Rao, J.*) **SUBBA RAO v. KAMARAJU**
183 I.C. 708 = 12 B.M. 368 = 40 Cr.L.J. 822 (2) = 1939 M.W.N. 742 = 49 L.W. 656 = A.I.R. 1939 Mad. 577

—Scope and object of—If affects validity of marriages solemnized.

The Child Marriage Restraint Act aims at the restraint of solemnization of child marriages. It does not affect the validity of the marriages after they have been performed. There may no doubt be cases where the Court in the exercise of its discretion, may refuse to give a declaration in the case of a marriage performed in cor. (*J.J.*)

CHOTA NAGPUR ENCUMBERED ESTATES ACT (1876), S. 12

—Ss. 5 and 6—Complaint under—Finding that either or both contracting parties were infants—Duty of Magistrate.

In cases of complaints of offences under Ss. 5 and 6 of the Act it is essential that trying Magistrate should find definitely that either or both of the contracting parties to the marriage were infants within the meaning of the Act, that is to say, that the bridegroom was under the age of 18 or that the bride was under the age of 14 (*Bartley and Henderston, J.J.*) **SEW RATAN LAL BINANI v. EMPEROR.** 181 I.C. 916 = 11 B.C. 874 = 40 Cr.L.J. 605 = A.I.R. 1939 Cal. 288.

—Ss. 5 and 6—Marriage in Native State—Accused living in British India—Certificate under S. 188, Cr. P. Code, if necessary.

Where it is alleged that the accused lived in British India and arranged for a marriage in contravention of the provisions of the Child Marriage Restraint Act, to establish that fact, the accused must produce a certificate from the Political Agent of the Native State.

—S. 9—Scope and effect of—Complaint beyond one year—If saved by prior unsuccessful complaint filed within time—Limitation Act, S. 14

S. 14 of the Limitation Act is in terms restricted to a complaint filed within time.

another unsuccessful complaint had been made to another Magistrate within time would not help to make the second complaint filed beyond time a valid one. (*Lakshman SATYANAR*)

—S. 10—Scope—Non-compliance—Failure to hold preliminary inquiry—Conviction—If liable to be set aside—Failure of accused to object to trial—Effect.

S. 10 of the Child Marriage Act no doubt requires that a preliminary inquiry must be held. But where a Court finds that there is a *prima facie* case and also holds the offence established after a proper trial it cannot be held that the conviction must be set aside for the technical reason that no preliminary inquiry was held as required by S. 10. This does not mean that Magistrates are entitled to disregard the provisions of S. 10. But where the accused does not object to the trial, he cannot benefit by an objection which is entirely technical in its nature. (*Agarwal, J.*) **HARIHAR TIWARI v. ETWARI GOPE**
184 I.C. 230 = 6 B.R. 24 = 40 Cr.L.J. 887 (1) = 12 R.P. 231 = 1939 P.W.N. 670 = 20 Pat.L.T. 495 = A.I.R. 1939 Pat. 625.

—S. 10—Scope—Omission to hold enquiry—Effect of

S. 10 of the Child Marriage Restraint Act is mandatory and clearly prohibits a Court from taking cognizance of an offence under the Act without a preliminary inquiry being held. A process issued without holding an inquiry as required by S. 10, is therefore unauthorised and illegal. (*Pandurang Rao, J.*) **JAGGU NAIDU,**
183 I.C. 581 = 12 B.M. 343 (1) = 40 Cr.L.J. 818 (1) = 1939 M.W.N. 411 = 49 L.W. 552 = A.I.R. 1939 Mad. 530 = (1939) 1 M.L.J. 900.

CHOTA NAGPUR ENCUMBERED ESTATES ACT (VI OF 1876), S. 12 A—Construction—"Hd"

CHOTA NAGPUR ENCUMBERED ESTATES ACT (1876), S. 12

—Application by manager of Hindu joint family as manager for protection—Effect—Whole family—If holders—Mortgage by some members of family without sanction—Validity of

The word 'holder' in S 12 A of the Chota Nagpur Encumbered Estates Act is expressly used to mean a landholder who has a title to the property in question as

"holder" in the notification issued under S 2, the disqualification referred to in S 12 A of the Act applies not merely to the Karta who has made the application but extends to the entire body of the coparceners. The members other than the Karta are no less 'holders' of the estate, as the disqualification is given and must be held to be nothing in the Act Hindu family from Act on behalf of the application is made the whole family and the holder of the estate Act to suggest that entitled to protection cuted by a member of the family without sanction is

—S 12 A—Sales in execution come under S 12 A

—S. 12 A—Scope of—Mortgage without

—Right to personal decree.

S. 12-A of the Chota Nagpur Encumbered Estates Act prohibits an alienation of the property

CHOTA NAGPUR TENANCY ACT (1908), S 211.

appeal See C P CODE, S 103—FINDING OF FACT—FINALITY 178 IC 274=A I R 1939 Pat 161

—S 69—Tenant transferring holding—Misuse by transferee—If incapable of remedy

S 69 of the Chota Nagpur Tenancy Act cannot be construed to mean that when a tenant has transferred his holding to another person, the transferee is not bound by the provisions of the Act.

11 R P. 380=A I R 1939 Pat 49

—S 177—Applicability—Suit commenced before Deputy Commissioner but transferred to Civil Court—Procedure—Question of title—Appeal—Forum

S 177 of the Chota Nagpur Tenancy Act applies

—Ss 181, 182 and 231—Construction and scope—

Rent Court or a Deputy Commissioner can hear proceedings under the Act. Hence the transfer of decrees of a Commissioner to Civil Court for execution is

But when an application for execution is transferred to a Civil Court it will not lose its character as a proceeding under the Act and will not be governed by the rules and statutes which regulate the procedure

A. I R 1939 Pat 19

5 B R 298=1939 P.W.N 41=11 R P 413=20 P L T 346=A I R 1939 Pat. 225

—S 22—Breach of—Finding that land had been rendered unfit for tenancy—Interference in second

CHOTA NAGPUR TENANCY ACT (1908), S. 213.

—Ss 213 and 258—Scope—Decree for rent in suit against non-tenant—Sale of holding in execution—Purchase by stranger—Suit by tenant for recovery of holding—If barred—Prior unsuccessful application under S. 213—Effect of—Purchaser's right to order of refund.

Where a landlord brings a suit against a person, who is not his tenant, and obtains a decree, and the holding is sold in execution of the decree and is purchased by a third person having no knowledge of the fraud alleged to have been practised by the landlord, the tenant for recovery of the holding under S. 258, the plaintiff belongs to him, set aside the sale.

very of the property. The purchaser of the holding is not entitled to an order for refund of the purchase price.

Orders passed on applications for setting aside sales in execution of rent decrees fall within S. 215 (3) of the Chota Nagpur Tenancy Act, and are subject to appeal and second appeal.

Manohar Lal J.—The Legislature in enacting S. 215, intended to depart from the interpretation put upon similar words in S. 47, C. P. Code, the language of S. 215 (3) of the Chota Nagpur Tenancy Act is wide enough to make an appeal competent in the case of applications for setting aside sales. (*Harrier, C J* and *Manohar Lal, J.*) MAHARAJA PRATAP UDAI NATH SHAH DEO v. SUKHDEO PRASAD BHAGAT.

SS 213 AND 258

A I.R. 1939 Pat. 171.

CIVIL PROCEDURE CODE (V OF 1908)—Scheme underlying—Body and schedule—Relation between—Conflict—Preference

The C. P. Code must be regarded a whole and it came into being as a whole as its first section will show. The scheme was to make the body of the Code confer jurisdiction and the schedules to detail the mode in which that jurisdiction is to be exercised. Therefore, if there is any conflict between the body and the schedules the former must prevail. (*See C. P. Code, s. 2, and s. 11.*)

A I.R. 1939 Nag 186 (F B)

—Scope of—Provisions, if subject to those of Limitation Act.

The provisions of the Civil Procedure Code are subject to the provisions of the Limitation Act. Both Acts are general Acts and are *in pari materia*. The Acts therefore must be read together and must be treated as complementary of each other. (*Thom, C J*, *Iqbal Ahmad and Bispiar, JJ.*) DURAG PAL SINGH v. PANCHAM SINGH.

1939 A.W.R. (H.C.) 498—1939 A.L.J. 622—12 E.A. 98—1939 O.L.R. 472—182 I.C. 242—A I.R. 1939 Ail. 403 (F B)

—S 2—Judgment—After preliminary decree, decree-holder filing application for final decree and

C. P. CODE (1908), S. 2.

judgment-debtor filing application for extension of time—Two applications heard together—Diary note rejecting prayer for extension and ordering final decree to be drawn up—If amounts to judgment

A preliminary decree for sale was passed in a mortgage suit in 1934. Early in 1935, the Court had before it two applications, one by the judgment debtor asking for more time to pay off the decretal amount and another by the decree-holder for a final decree for sale. The two applications were heard together and on 8th May 1935 the Court made the following order:

as follows:

draw up final

The typed

tain at the

d and seal,

this day" etc. The Judge signed that form on the reverse and put 29th June 1935 as the date of signature.

execution application of 25th June 1938 was time-barred (*Baguley, J.*) G. M. EUSOOF v. S. V. S. T. CHETTIAR FIRM 183 I.C. 894=12 R.R. 119=

A I.R. 1939 Rang 294.

—S 2 (d)—"Decree"—Application for ascertainment of mesne profits under O 20, R. 12—Order rejecting—If decree See COURT-FEES ACT (AS AMENDED IN MADRAS), SCH II, ART 11.

49 L.W. 652

—S 2 (2)—Decree—Conditional decree in pre-emption suit—Subsequent order dismissing suit for default—Appeal See C. P. CODE, S. 115—OTHER

41 P.L.R. 381.

2) and 96—"Decree"—Essentials of—

controversy in the suit—Meaning of—

son against father—Alienation of some

by father pending suit—Preliminary

application for allotment of alienated properties to father—Order rejecting—Appealability.

When after the preliminary decree and before the final decree in a partition suit by a son against his father an application is made to the Court praying that certain items of property alienated by the defendant pending suit should be allotted to the defendant so that the alienee may not be disturbed in his possession, an order rejecting that application is not a decree and is not appealable, as it does not deal with a matter in controversy in the suit. (*Mockett and*

NANDESAM CHIVU LAKSHMI

DARI 60 L.W. 652

A I.R. 1939 Mad 277.

Ss 151 and 152—Not appealable—Revision

An order of amendment of a decree made under S. 151 and 152 of the C. P. Code is not appealable.

41 Bom L.R. 800—A I.R. 1939 Pat. 175=

—S 2 (2)—"Decree"—Order for setting aside decree of appeal for insufficiency in Court fee without giving time to make up deficiency—Appealability

An order rejecting a memorandum of appeal on the ground that it is insufficiently stamped is not a decree if the deficiency is brought to the notice of the Court without giving the appellant any time to make

C P CODE (1908), S 2

deficiency is clearly a decree as defined by S 2 (2) C P Code and is appealable as such. Such a rejection is not a rejection in any of the circumstances specified in any of the clauses of O 7 R 11 C P Code in which cases alone R 13 of O 7 will apply (*Dhale and Agarwala JJ*) RAM SAWARI KUER v MOTIRAJ KUER 1939 P W N 162=17 Pat 687=

19 Pat LT 885=178 IC 150=5 BR 59= AIR 1939 Pat 83

—S 2 (11)—Legal representative—Claim as—*Position as regards a rival claimant*

Where a person not in possession of the property of a deceased person, claims it as the legal representative of that person the fact that a person is in possession of the property as legal representative of the estate (*Hort J*) JHA 178 IC 193=5 BR 65=11 RP 229=

AIR 1939 Pat 47

—S 2 (11)—Legal representative—Person who is not lawful heir

Where a mortgage decree holder has died leaving her daughter as lawful heir and collaterals who are not lawful heirs the collaterals cannot be considered to be legal representatives of the deceased within the definition of that term given in S 2 (11) if it is in possession of the property with mortgage. Moreover even if the definition cannot help them merely managed to obtain on property of a deceased person

execute decrees in favour of the deceased on the strength of such possession when he is not the lawful heir. A person who intermeddles with the property of a deceased person has been probably included in the definition of a

The word 'wrongful' in S 2 (12) C P Code is used in a special sense which is 'wrongful' means that the person who is against the party claiming as against that party for mesne profits, but not (*Rose, J*) RAMNATH RADHAKRISHNAN 1939 N L J

—S 2 (12)—Mesne profits—Liability for—Auction purchaser—Position with reference to

The mere fact that possession is by the instrumentality of the Courts does not avail either the auction purchaser as against the parties to the decree. So far as they are concerned the rule of caveat emptor applies and the auction purchaser even though a stranger to the decree purchased would have to yield up possession. He also was not a party to the decree rule about mesne profits could not be so (*J*) RAMNATH HAJARIMAL v MOHANLAL RADHA KISAN 181 IC 105=11 EN 424=

1939 N L J 21=AIR 1939 Nag 23

—S 2 (12)—Wrongful possession—If implies possession obtained by improper act

C P CODE (1908) S 9

It is not necessary that possession in order to be wrongful for purposes of a claim for mesne profits must have been obtained in consequence of some improper act (*Bennett and Verma JJ*) TULSI RAM v GOBIND SINGH 184 IC 91 12 EA 175=1939 RD 292=1939 A L J 433=1939 A W R (H C) 344=

AIR 1939 All 529

—S 2 (17) (e)—Public officer—Agent of Railway Company—Railways Act S 131 See EVIDENCE ACT S 124 43 C W N 664

—S 2 (17)—Elected member of provincial Legislature—If public officer See C P CODE O 21 RR 48 AND 46—SALARY OF M L A—LIABILITY TO ATTACH

512
—Court

—S 2 (17) (h)—Public officer—Liquidator of a Co operative Society—If one See C P CODE SS 80 AND 2 (17) (A) 1939 N L J 215

—S 9—Civil nature—Dispute as to mode of placing jewel with mark on deity—Suit in respect of—If lies

A dispute as to the way in which a particular jewel with a particular mark should be placed on the God or

AIR 1939 Mad 751

—S 9—Denial of right of inheritance—Cause of action

A suit merely to declare a person an heir does not lie if alleged in the death of the husband's that he had no share in the property his share in the property after the stated that the

plaintiff's right of inheritance had been asked to admit the plaintiff's right of inheritance and hence declaration that ownership in the

plaintiff's right of inheritance did not furnish was liable to be

(*J*) CHULAM 41 P L R 615=

AIR 1939 Lah 158

—S 9—Scope—Dispute as to propriety of placing namam or mark on Godhead—Jurisdiction of Court

A question as to whether a particular namam or mark should be placed on the Godhead is at best one pertaining to religious ritual and as such is excluded

C. P. CODE (1908), S. 9.

from the cognizance of a Civil Court. To allow it to be tried would amount to an abuse of the process of the Court. (*Venkatasubba Rao and Ashur Rahman, J.J.*)

honor—Suit in respect of—Maintainability.

One test which is necessary to constitute an office is a corresponding compellable duty, but if that is absent there is no office but only an honour which cannot be made the subject of a suit by reason of S. 9, C. P. Code. A right to lead a horse on a particular festival in a temple whenever that festival is performed, cannot be held to be a right to an office, when there is no compellable duty on the part of the claimant. (*Leach, C.J. and Somayya, J.*) **KAVASWAMI GOUNDAN v. LAKSHMANA REDDIH** 50 L.W. 206 =

1933 M.W.N. 792 = A.I.R. 1939 Mad. 886 = (1939) 2 M.L.J. 420

—S. 9—*Suit of a civil nature—Claim by temple archakas to prostrate twice before deity during service—Trustees forbidding archakas to prostrate more than once on pain of dismissal—Suit by archakas—Maintainability*

A suit by archakas of temple who are hereditary officeholders and temple servants to establish their right to prostrate themselves twice before the deity while performing certain ceremonies as archakas as they had been doing from time immemorial is one of a civil nature. The act of the trustee in directing the archakas to prostrate only once and not twice on pain of dismissal is an outrage on their religious rights and a ground to a cause of action for suit. (*Ashur Rahman, J.*) **AIVANACHI v. CHARIAR** 1939 M.W.N. 418 =

—S. 9—*Suit of civil nature—Parayanam miras in temple with emoluments and honours attached.*

A suit in which a claim is made in respect of a religious office, called *Vedaparayanam* miras to which

—S. 9—*Suit of civil nature—Communal festival in public temple—Suit by members of community in respect of ritual observances—Jurisdiction of Court*

The Civil Courts have no jurisdiction to decide matters of ritual except in so far as a decision on such matters is a necessary incident to the decision of a civil right. The general rule is that once the general right to worship is conceded or established, the Courts will not endeavour to lay down the ritual which is to be followed, nor will they prescribe the manner in which the worship is to be conducted. Certain members of the Senguntha community in a village used to establish rights known as *Kappu Kattu* and *Diparathana* in a public temple. It appeared that the claim related to certain ritual observances in the communal festival, but neither the right to worship nor the right to any office or perquisites attaching thereto was in issue.

Held, that the suit was not a suit of a civil nature and could not therefore be entertained by the Court. (*Radworth, J.*) **NARAYANA MUDALI v. PERIYA KALATHI MUDALI** 1939 M.W.N. 273 = 49 L.W. 295 = A.I.R. 1939 Mad. 494 = (1939) 1 M.L.J. 199

—S. 9—*Suit of civil nature—Right of worship.*

C. P. CODE (1908), S. 11.

A suit does not cease to be one of a civil nature because in order to decide it, the Court has to decide questions as to religious rites or ceremonies. The right is a civil right which the Court will take. (*Venkatasubba Rao and Ashur Rahman, J.J.*)

ACHARIAR v. SATAGOPACHARIAR.

39 M.W.N. 418 = A.I.R. 1939 Mad. 757.

—S. 10—*Applicability—Parties neither same, nor litigating under same title.*

Where the parties to the two series of litigations are not the same and they are not suing under the same title, either of the suits could not be stayed under S. 10, C. P. Code. (*Durling, S.M. and Mehta, J.M.*) **RAM LAL v. NAWAL KISHORE** 1938 R.D. 935 (1) =

1939 A.W.R. (B.R.) 60.

—S. 10—*Applicability and Scope—Matter in issue—Meaning—Suit and appeal concerning same plot of land but in respect of rents of different periods—Stay—If to be granted.*

The provisions of S. 10, C. P. Code, are mandatory in character and when the facts of a particular case involve the operation of that section, the Courts have no other alternative but to give effect to it and stay the suit. The expression "matter in issue" does not mean any matter in issue in the suit but refers to the entire subject matter in dispute, and not merely to one of the issues, however important it may be for the decision of the suit. Where an earlier appeal and a subsequent suit between the same parties relate to the same piece of land that fact alone cannot be a ground for stay under S. 10 C. P. Code, when the amount claimed in the later suit is for a different period from that claimed in the former suit. (*Arden, J.*)

hence

'TUNU-

331 =

J. 290.

—S. 10—*"Suit"—Includes appeals*

(*Obiter*). In S. 10 which is closely connected with S. 11, "suit" must include appeal. The section refers to suits pending before His Majesty in Council. (*Davis, J.C. and Tyabji, J.*) **BADALDAS v. GURDINOMAL** A.I.R. 1939 Sind 329.

—S. 11

Applicability

Co-defendants.

Competent Court

Compromise decree

Connected appeals

Connected suits

Directly and substantially in issue

Erroneous decision

Execution proceedings

Findings.

Heard and finally decided

Might and ought (*See Expl IV*)

Miscellaneous proceedings

Parties and their representative

Plea how established

Rent suit

Successive suits for same relief

Expl. IV—Might and ought

Expl. VI—Mortgage suit

—S. 11—*Applicability to suits—Difference in different Court—Absence of one party—Effect on appeal from suit*

The rule of *res judicata* applies to appeals as well as to suits where pending a suit in one Court another suit is filed between the same parties at

C P. CODE (1908), S 11.

and the decision of latter Court becomes final, there being no appeal from it an appeal from the decision of first Court is barred by *res judicata* (*Davis J C and Tjohri, J*) **BADALDAS v GURDINOMAL**
A.I.R. 1939 Sind 329

—S 11—Applicability—Applications under Madras Estates Land Act See **MADRAS LAND ACT, S 20 A** (1939) 2 M

—S 11—Applicability—Decision in execution proceedings under decree in one suit—Subsequent suit between same parties—Execution of decree in—Decision in execution under prior decrees—If *res judicata*

There is no warrant for holding that there is no *res judicata* in respect of a decision in an execution petition under a former decree when the same matter arises for decision in an execution petition under a subsequent decree between the same parties. In such a case the principle of S 11, C P Code, directly applies (*Wadsworth J*) **CHINNAPPAYAN v NARAYANA PATTAR**
1939 M W N 1145=50 L W 677

—S 11—Applicability—Proceedings under Land Acquisition Act See **LAND ACQUISITION ACT S 31 (2) PROVISIO** A.I.R. 1939 Sind 66

—S 11—Co defendants—Joint decree passed against some partners in respect of debt contracted by them—Defence that other partners are necessary parties negatived—Question whether debt is partnership debt—If *res judicata* in suit between defendants

against some debt contracted by them negatived partners were

Conditions

For a decision to operate as *res judicata* between co defendants there must be a conflict of interest between the defendants it must be necessary to decide this conflict in order to give the plaintiff the relief he claims

dismissed in toto (*Almond, J*)
AMIR KHAN v AMIR KHAN
11 E Pesh 61=

—S 11—Co defendants—Res—Proforma defendant not con plaintiff's claim—Dismissal of suit—Decision—If *res judicata*

It is clear that neither the fact that a defendant did not contest but supported the plaintiff's claim nor the fact that he was merely joined as *proforma* defendant nor again the fact that the suit finally ended in a dismissal is a good reason for negativing a plea of *res judicata*
a posit
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C P CODE (1908) S 11

right of appeal from the decisions of that Court, and the competence of a Court and the finality of a decision is not dependent upon whether an appeal was or was not made. A Court may be competent and a decision final within the meaning of S 11 even if no appeal is

—S 11—Competent Court—Court deciding prior suit to be competent to try subsequent suit

For the bar of *res judicata* under S 11, C P Code, to apply one of the essential conditions is that the Court which decided the former suit must be competent to try the subsequent Court (*Noor and Chatterji, JJ*)
KAMLAPATI DEVI v JAGESHWAR DAYAL

18 Pat 342=183 IC 400=5 B R 938=
12 R P 143=1939 P W N 8=
A.I.R. 1939 Pat 375

—S 11—Competent Court—If refers to territorial jurisdiction

Competency of a Court in connection with S 11, C P Code has no reference to territorial jurisdiction (*Colliste*)

(2)=
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—S—
and regular suit between same parties heard by same Judge
—Separate judgments—Common question—Appeal against original suit—Finding in Small Causes suit
—If *res judicata*

Where a small cause suit and an original suit as summary question is Judge exercised is preferred the Small matters in *res judicata*

183 IC 689=12 R N 78=1939 N L J 87=
A.I.R. 1939 Nag 130

—S 11—Compromise decree—If can operate as *res judicata* in later suit

It cannot be said that a consent decree can never

—S 11—Compromise decree—Compromise between certain parties only—Decree based on—Party to suit not party to compromise—Subsequent suit by—*Res judicata*

Where a suit ultimately ends in a compromise a party to the suit who is not a party to such compromise is not bound by it and the decree passed thereon, based as it is on the compromise cannot operate as *res*

capacity for personal relief by limited owners—Compromise—If *Res judicata* as against reversioners

Where a suit was brought by two daughters of a Hindu father in their personal capacity and for a personal relief, any compromise of that suit, cannot operate

Section 11 operates to exclude the jurisdiction of a Court to try a subsequent suit only if the first suit was tried by a Court which was competent to try the second or subsequent suit. The competence of a Court is to be determined irrespective of any provision as to the

C. P. CODE (1908), S. 11

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A I R 1930 All 197.

—S. 11—Compromise in prior suit—Agreement to pay rent—Subsequent suit for arrears of rent—Right to payment of rent, if can be denied.

Where in a previous suit for arrears of rent, a compromise is entered into, by which the tenant agreed to pay the plaintiff a certain annual rent, and it had been acted upon, it is not open to the tenant in a subsequent

is not
ig. S.

A I R 1930 All 917.

—S 11—Connected appeals—Common judgment in two appeals—Appeal against one of the appellate decrees—Other, if would operate as *res judicata*.

It cannot be said that in every case where two connected appeals are disposed of by a common judgment and an appeal is preferred against only one of the decrees, the other becomes final and operates as *res judicata* (*Zia-ul-Hasan and Bennet, J.J.*) **BANKEY LAL v. NAND LAL** 181 I.C. 771=1939 O L R 657=1939 A W R (C C) 245=1939 O W N 955

—S 11—Connected suits—Restoration after dismissal for default—Appeal in one suit only—Final order in the other suit—If *res judicata*.

Where on the restoration of two connected suits dismissed for default, an appeal against the order restoring the suit is filed in one suit only, the principle of *res judicata* bars the appellate authority from setting aside the order of restoration in one suit when the order in the other suit had become final. (*Bonford, S M. and Mehta, J.M.*) **AYUB ALI H. v. SHANTI DEVI** 1939 R D 60=1939 A W R. (B R) 141.

—S. 11—Directly and substantially in issue—Decision of question raised incidentally—If *res judicata*

A question of title raised only incidentally in a previous suit can be re-agitate

(*Wort and Fast Ali, J.J.*) **D. DOKINANDAN PRASAD SING** 5 B R 813=12 B P 11

—S 11—Directly and substantially in issue—Landlord and tenant—Decision of question of title—If *res judicata* in later suit as to nature or amount of payment to be made by tenant—Title merely collateral and incidental

A previous judgment on title in a suit between a landlord and his tenant cannot operate as *res judicata* in a subsequent suit on the question as to the nature of or the rate of the amount payable by the tenant on the question of title in the later suit incidental to suit and not directly in it

BIKAN MAHURI v. M. BIRI WALIAN 183 I C 763=5 B R 983 20 Pat L T 671=A I R

—S. 11—Erroneous decision—Decision operates as *res judicata*—Res *judicata*

The doctrine of *res judicata* is only a form of estoppel,

C. P. CODE (1908), S. 11.

judgment-debtor—Application dismissed against him on ground they had no assets, deceased having conveyed all his properties in trust—Decree realised from other co-sharer judgment debtor—Suit by him for contribution against trustees and heirs of deceased—If barred

An application for execution of a rent decree making the heirs of one of the judgment debtors parties was dismissed as against them on the ground that they had no assets of the deceased in their hands, the deceased having executed a deed of trust in respect of all his properties during his lifetime. The decree-holder realised thereafter the amount of the decree from another co-sharer judgment debtor personally. The latter sued the trustees and heirs of the deceased for contribution and the Court held that the deceased had not divested himself of the ownership of the properties by the deed of trust and the trustees were no better than mere managers and the plaintiff was, therefore, entitled to contribution from the assets in the hands of any one of the defendants either as managers or as heirs of the deceased.

Held, that the suit for contribution was not barred by *res judicata* by reason of the order passed in the execution proceeding dismissing the application against the heirs of the deceased (*Mukherjee and Roxburgh, J.J.*) **RADHA RANI v. BRINDARANI** 43 C W N. 940.

—S 11—Execution proceedings—Constructive *res judicata*—Applicability—Omission to raise objection and order in previous execution making properties liable in execution—If binding in subsequent execution.

Where a judgment-debtor has failed to raise all his objections, they will be deemed to have been impliedly decided against him, and he is therefore precluded from raising the same objections in a later execution of the same decree. To this extent the doctrine of constructive *res judicata* is applicable to execution proceedings. An order in a previous execution that the decree holder is entitled to proceed against certain property must be held binding on the parties in subsequent

it is not open to the judgment-debtor in a subsequent execution the against that property cannot be raised (*and Rowland, J.J.*) **ETULA** 5 C L T 29

—S 11—Execution proceedings—Constructive *res judicata*—Basis of principle—Order for substitution in place of decree-holder—No notice served on judgment-debtor—Latter, if can challenge order.

Per Mitter, J.—The principle of constructive *res judicata* has been applied to execution proceedings on the basis on which the principle rests is this, that if a

substitution of a certain person as the place of the decree-holder is passed without notice to the judgment-debtor and in his absence, it is open to him to

—S 11—Execution proceedings—Application for execution of rent decree filed impleading heirs of deceased—If barred

Y. D. 1939—10

that a certain property is liable to execution and that all the heirs of the judgment-debtor are

C P CODE (1908) S 11

saleable and operates as *res judicata* so far as subsequent execution petitions are concerned. Hence a claim of a right to residence cannot be raised in later execution petitions. (*D R Norman*) ALE RASUL ALI KHAN v BAL KISHAN 1939 A M L J 61

—S 11—Execution proceedings—Finding in—Res judicata—Sameness of subject matter—If necessary

A finding in a previous execution proceeding is not *res judicata* in a subsequent execution proceeding when the subject matter of both the proceedings is not the same. Consequently a decision in a previous execution proceeding that the judgment debtor was not proved to be an agriculturist is not *res judicata* in a subsequent execution proceeding, when the parties to both the proceedings are different. BALDEV SINGH v SHER SINGH

AIR 1939 Lah 556

—S 11—Execution proceedings—Infructuous application—Omission to raise objection in—Res judicata

Where no objection is taken, but the application for

1939 Rang LR 152=184 I C 74=12 R R 121=

AIR 1939 Rang 245

—S 11—Execution proceedings—Objection O 21 R 58 summarily dismissed—Second under S 47—If competent

If an objection purporting to be under O 21 C P Code and treated as such by the Court is summarily dismissed without notice to the opposite side on the ground that it appeared to be collusive a second objection under S 47 C P Code, is certainly competent as no question of *res judicata* can arise in such circumstances. (*Bhile J*) DAULAT RAM v ANANT

41 P L R

—S 11—Execution proceedings—Omission oppose substitution of assignee of decree—Judgment debtor, if precluded from questioning assignee's title to execute

to execution of the decree by reason of any bar imposed by law 60 Cal 1181 referred to (*Dunkley, J*) MA TIN v KO BA THET 1939 Rang L R 152=

184 I C 74=12 R R 121=AIR 1939 Rang 245

—S 11—Execution proceedings—Order dismissing objection by judgment debtor to attachability of land—Continuation of proceedings—Subsequent reversal of order—Res judicata

Executing Court dismissed the objection of the judgment debtor and held that the ancestral land in the hands of the son was liable to attachment in execution of decree against deceased father. The proceedings continued and the executing Court began to arraign for the lease of the land. But before the lease the Punjab Debtors' force and the executing Court reversed its decision.

Held that the order of the execution-debtor's objection was not final and hence it was not precluded from reversing its erroneous order. No question of *res judicata* therefore arose. (*Abdul Rashid J*) NAND MAL DURGAS DAS v NAZIR AHMAD 41 P L R 635=AIR 1939 Lah 168

—S 11—Execution proceedings—Orders in—When not *res judicata*

C P CODE (1908), S 11

Where no objection to execution is taken and the application for execution does not fructify but is withdrawn and dismissed no order for execution having been made the judgment debtor is not debarred by principles of estoppel or *res judicata* from raising the question of limitation at a later stage. (*Roberts C J and Dunkley, J*) MAUNG MAUNG v V V K CHETTYAR FIRM AIR 1939 Rang 296

—S 11—Execution proceedings—Order under O 21, R 48—Subsequent application contesting its validity—If barred

Where an order under O 21 R 48 C P Code judgment debtors' salary has been assailed the validity becomes final as against the creditor on contesting the validity of the order of attachment is barred by the general principles of *res judicata*. (*Mya Bu and Dunkley JJ*) U NYUN TIN v SAW EU HOKE

AIR 1939 Rang 384

—S 11—Execution proceedings—Plea of adjustment—Rejection of the plea—Appeal—Ground of appeal—Subsequent execution—*res judicata*

When a plea of adjustment of decree in bar of execution is rejected by the executing Court as having been made in regard to the appeal with the Court is concluded that the judgment debtor is

precluded from raising the same plea in a subsequent execution on the principle of *res judicata*. (*Verma and Rowland, JJ*) SAH RADHA KRISHNA v MT BECHNI DEBI 1939 P W N 716

—S 11—Execution proceedings—Res judicata—

11 R P 530—AIR 1939 Pat 19

—S 11—Execution proceedings—Settlement of the proclamation—Decision on issues raised by parties—*Res judicata* See C P CODE, S 47

50 L W 578

—S 11—Execution proceedings—Wrong decision against judgment debtor on point raised by him—If *res judicata*

Where an objection that the transfer by Rent Court of application for execution to Civil Court was without jurisdiction was agitated and was decided against the judgment debtors in the earlier execution and an appeal was presented from that decision and failed it is no longer open to the judgment debtors to raise it on the principle of *res judicata* being a bar to the contention even though the Court before whom the previous execution

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AIR 1939 Pat 230

—S 11—Findings—Judgment reversed in appeal—Finding not disturbed—If *res judicata*

A finding in a judgment that a certain party is governed by Hindu Law and not by custom is not *res judicata* in a later proceeding when on appeal by him the judgment is reversed although the Appellate Court

C. P. CODE (1908), S. 11.

does not specifically disturb the finding. (*Din Moham-mad, J.*) JETHU MAL-HARI PARSHAD v. TELU.

41 P L R 596 = A I R 1939 Lah 640

—S 11—Findings—Suit remanded on appeal for fresh decision—Findings given by Appellate Court—If res judicata in subsequent appeal against fresh decision.

If a suit is remanded on appeal for a fresh decision, it is clearly open to any party dissatisfied with the fresh decision to challenge all points decided at any stage of the suit. Consequently any finding given by the Appellate Court ordering remand is not necessarily *res judicata* in a subsequent appeal against the final decision after remand. (*Mitchell, F. C.*) PAINDA KHAN v. MAHOMED AZIM KHAN.

18 L L T 24

—S 11—Heard and finally decided—Abandonment of claim by plaintiff.

Where the plaintiffs in a suit abandon their claim, there is no trial of issues arising between the parties and consequently there is no decision which can operate as *res judicata*. To prevent the defendants being harassed unnecessarily a second time on the same cause of action the law however prescribes that the plaintiff shall not sue again on the same cause of action, unless the suit is withdrawn under O 23, R 1 C P Code, owing to some technical defect and the permission of the Court is obtained. (*Bride J.*) NAND LAL v. MT. LAKHMI.

A I R 1939 Lah 414

—S 11—Heard and finally decided—Decision not on merits—If *res judicata*.

The dismissal of an application under Ss 5 and 30 of Agriculturists Relief Act on the ground that no evidence in proof of the applicant being an agriculturist was produced and not after a consideration of the parties' evidence on the point, is not a bar under S 11 C P Code, to a subsequent similar application. (*Zia ul-Hasan, J.*) GOPAL DAS v. PUTTU LAL.

1939 O A 425

—S 11—Heard and finally decided—Decision under O 22, R 5—If *res judicata*.

A decision under O 22, R 5 that a certain person is not the legal representative of the deceased party is not *res judicata* because this order is not subject to appeal and the matter decided is therefore not finally decided. A I R 1934 Lah 465, Rel on (*Stimp J.*) MOHAMMAD KHAN v. JAN MOHAMMAD.

A I R 1939 Lah 5

—S 11—Miscellaneous proceedings—Decision, Asst Settlement Officer prior to the date of introduction of C. P. Code—If *res judicata* in subsequent proceedings.

Prior to the introduction of the C. P. Code into Oudh, jurisdiction about the rights to land was of the Courts of revenue. Where an Asst Settlement Officer has decided about a matter, his decision is *res judicata* in any subsequent suit between the representatives of the original parties. (*Hamilton, J.*) JADUNATH SINGH v. BISHESHAR SINGH.

178 I C 950 =

1938 O W N 1267 = 1939 O A 2 = 11 R O. 127 = A I R 1939 Oudh 17.

—S 11—Miscellaneous proceedings—Findings in proceedings under S 30-A of the Oudh Rent Act—Civil suit to declare order, not affecting plaintiff—If barred by *res judicata*.

Where certain findings are arrived at by the Deputy Commissioner for the purpose of making an order in what is practically an executive matter under S 30 A of the Oudh Rent Act, those findings cannot operate as *res judicata* in a subsequent civil suit brought to obtain a declaration that the order of the Deputy Commissioner had no adverse effect upon the right of the plaintiffs and to declare their title to the land in question. (*Vorke,*

C P. CODE (1908), S. 11.

J.) SITA RAM v. CHHEDA.

14 Luck. 416 =

179 I C 580 = 1939 O L R. 55 = 1939 R. D. 54 = 1939 O W N. 89 = 11 R O. 184 = 1939 O A 300 =

A I R 1939 Oudh 73

—S 11—Miscellaneous proceedings—Judgment of Civil Court—Co-defendants members of one family—Conflicting interests—Decision as to relationship—Subsequent revenue proceedings—Question as to relationship—If *res judicata*.

Where in a civil suit the co-defendants were all members of one family and they had conflicting interests a decision as to the relationship of one of them is *res judicata* in subsequent revenue proceedings as between the members of that family in regard to that question of relationship. (*Mehra, S. M.*) KAMTA AHIR v. BHAGU.

1939 A W R (B R.) 9 = 1939 R D 82.

—S 11—Miscellaneous proceedings—Proceeding under O 21, R. 100—Finding of fact in—*Res judicata*.

A finding of fact arrived at in a proceeding under O 21, R. 100, C P Code, would not be *res judicata* in a subsequent suit. (*Henderson, J.*) BISWESWAR BANERJEE v. NABA KUMAR SINGH.

70 C. L. J 111.

—S 11—Parties and representatives—Attaching creditor, if claims under debtor—Decision against debtor's estate—Binding nature.

An attaching creditor claims only under the debtor and hence is bound by any decree that might be passed against the debtor's estate. The decision in such a suit would operate as *res judicata*. (*D R Norman*) MANNA LAL v. M S T MANNA.

1939 A M L J 51.

—S 11—Parties and their representatives—Judgment debtor's title to particular property found against in earlier suit—Decree-holder attaching same property—Objection—Previous judgment, if *res judicata*.

Where a judgment debtor's title with reference to a particular property was found against him in earlier suit by him for possession of that property, and the decree-holder attaches that identical property in execution of his decree as against the judgment-debtor and another objects that it is not the judgment-debtor's property, the judgment in the earlier suit by the judgment-debtor operates as *res judicata* as between the objector and the decree-holder, for the judgment-creditor or decree

A I R 1939 Lah 600

—S 11—Plea of *res judicata*—How to establish—Decision as to title of person to receive compensation under Land Acquisition Act—If operates as *res judicata*.

In order successfully to establish a plea of *res judicata* or estoppel by record it is necessary to show that in a previous case a Court having jurisdiction to try the question came to a decision necessarily and substantially involving the determination of the matter in issue in the later case. Where a dispute as to the title to receive the compensation under the Land Acquisition Act has been referred to a Court and it has been determined, the matter is *res judicata* and binds the parties in any later suit involving that issue. (*Lord Porter*) PHA-WATI v. RAM KALI.

66 I A 145 =

I L R (1939) All 460 = 181 I C 211 = 1939 R D 285 = 43 C W N 677 = 5 B L C 68 =

1939 O L R 293 = 11 R P A 217 =

1939 O W N 549 = I L R (1939) Kar 199 (P C.)

1939 P W N 775 = 1939 A W R (P C.)

50 L W. 66 = 20 P L T 523 = 1939 A L J

C P CODE (1908), S 11

70 CLJ 23=41 PLR 638=1939 MWN 894=

C P CODE (1908) S 11

(2) that the fact that respondents 1 to 13 claimed to have

—If open

Where in a suit for arrears of rent the tenant does not object to the title of the landholder, it is not open

of the doctrine of *res judicata* because it was unnecessary for the respondents 1 to 13 to rely on their purchase from respondents 17 to 20 in any manner or to anyforward This is the essence of the principle of *res judicata* (Bomford, S M and Mehta J M) HABIB AHMAD v BHAGWANT 1939 R D 174=

1939 A W R (BR) 43

—S 11—*Res judicata*—Order under Bengal Tenancy Act, S 26—If *res judicata* on question of status of tenant See BENGAL TENANCY ACT, S 26 J—ORDER UNDER—EXTENT OF FINALITY

43 CWN 1046

—S 11—Same parties—Litigating under the same title—Prior suit for redemption of mortgage on basis of purchase from nearest ancestor of mortgagor—

Finding another to suit—also between heirs of

litigating under different title—*Res judicata*

The appellant brought a suit in 1925 for redemption of a mortgage and recovery of possession of the properties from respondents 1 to 13 to whose ancestor they were usufructually mortgaged by the owner one S who died without issue in 1877. S's widow who succeeded to his properties died in 1921. In March, 1925 the appellant purchased the properties from respondents 14 to 16 who were alleged to have inherited the properties as the nearest reversioners of S on the death of his widow. It was on the basis of this purchase that he brought the suit against respondents 1 to 13 impleading also his vendors respondents 14 to 17 as *pro forma* defendants. Respondents 1 to 13 pleaded that the respondents 14 to 16 were not the nearest competent to sell the properties agnate relation of S, was the nearest entitled to succeed after the death of S.

PATIRAJU 50 L W 809=(1939) 2 M L J 836

—Ss 11 and 47—Successive suits for same relief and between same parties and identical cause of action—Bar of

A subsequent suit for the same relief and on the same cause of action and between the same parties as a former suit is barred, being affected by the prohibition contained in Ss 11 and 47 C P Code (*Macklin and Wasoodew J J*) BHOGILAL v RATILAL.

183 IC 482=12 R B 103=41 Bom L R 497= A I R 1939 Bom 261

—S 11 Expl (IV)—Might and ought—Mokarari lease by Mohant—Suit by his successor for ejectment of successor of tenant on ground that he is heir of tenant and alternatively that tenant held only life interest—Suit dismissed—Subsequent suit by another Mohant for assignment of fair and equitable rent—If barred by *constructive res judicata*

A Mohant granted a mokarari lease of the property of a deity. His successor instituted a suit against the successor of the tenant for ejectment on two alternative grounds *vis*, that he himself was the heir of the tenant and that the tenant held only a life interest. This suit was dismissed. Another succeeding Mohant brought a suit for assignment of fair and equitable rent of the property of the deity. This suit was dismissed. Another succeeding Mohant brought a suit for assignment of fair and equitable rent of the property of the deity.

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impleading also as parties, the sons of P who were respondents 17 to 20. After the decision in the first suit and before the second suit, respondents 1 to 13 obtained a transfer of all such rights as respondents 17 to 20 might have to the properties.

Held, (1) that the suit did not cease to be a suit between the same parties as the previous suit.

Where a certain person had been impleaded in a suit as the manager of a joint Hindu family and he fails to put forth certain mortgagee rights in defence by virtue of which he was in possession and the suit is decreed against the defendants a representative of the joint Hindu family could not subsequently sue to enforce the

C. P. CODE (1908), S 11.

plaintiff—Omission to plead that transaction was really mortgage—Plea in later suit—If res judicata.

No mortgagor can be compelled to ask for redemption if he is not willing to redeem the mortgage, and so long as the mortgage subsists, the mortgagee can recover possession of the mortgaged property. Although the mortgagor in a suit for possession by the mortgagee who claims to be a vendee might urge that the transaction was a mortgage and might ask for redemption, of the mortgage he is not bound to do so, so as to bar him by the rule of constructive *res judicata*, from raising the plea in a subsequent suit by the mortgagee for a declaration of his title as owner and for possession, as it cannot be held that the question regarding the nature of the transaction is constructively in issue in the first suit for possession. (*Lokur, J.*) HALKRISHNA v. GAJA JAITYA 181 I.C. 500=12 R.B. 181=41 Bom L.R. 422=A.I.R. 1939 Bom 503

—S 11, Expl. IV—*Mortgage suit—Defendant claiming paramount title—Failure to plead—Res judicata*

A purchaser of the equity of redemption who is made a defendant in a mortgage suit is not bound to set up in that suit any independent or paramount title that he may claim, when there is nothing in the plaint of the mortgage suit which impugns such title. The omission to set up such title does not, therefore, preclude him from setting it up in a subsequent suit. (*Mukherjee and Roxburgh, J.J.*) SURAJ CHANDRA MONDAL v. BEHARI LAL 43 C.W.N. 1126=A.I.R. 1939 Cal 692

—S 11, Expl. V—If controls C
C. P. CODE, O 2, R 2 A.I.R.

—S 11 (6)—*Res judicata—Requis*

In order to determine whether the former suit operates as a bar by *res judicata* to the present suit, it is necessary to examine carefully not only the form and the substance of the former suit but also the plaint, the pleadings and the judgment thereof and compare them with those of the present suit. Moreover it is necessary to determine whether the former suit was between the same parties or between parties who litigated *bona fide* in respect of a private right claimed in common for themselves and others, i.e., the present plaintiffs. The plaintiffs in the former suit must be found to have

—S 13 (a)—*Applicability—“Court of competent jurisdiction”—Suit on mortgage in foreign Court—Defendant minor living with husband in British India—Husband appointed guardian ad litem failing to appear—Appointment of Court Nazir as guardian—Legality—Decree against assets of deceased in hands of def.*

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decree in a mortgage suit against the legal representative of the mortgagor limited to the assets of the deceased mortgagor cannot be passed so far as such assets are not situate within its own jurisdiction; where the defen-

C. P. CODE (1908), S 24

dant submitted to the jurisdiction of the Court. The foreign Court has no jurisdiction to appoint its own Nazir as the guardian *ad litem*, when the husband of the minor defendant, who is her *de jure* and *de facto* guardian has never expressed his unwillingness to act as her guardian. The fact that he was originally appointed guardian and failed to appear would not confer jurisdiction on the foreign Court to appoint its own officer as guardian *ad litem*, so long as the husband does not refuse to be guardian, by reason of O. 32, R.

parte decree against the minor is a nullity and does not bind the minor, and a suit based on such judgment is not maintainable in British India (*Lokur, J.*) GAJANAN SHESHADRI v. SHANTABAI 41 Bom L.R. 818=A.I.R. 1939 Bom 374

—S 13 (b)—*Applicability—Test—“Given on the merits of the case”—Meaning of.*

The test to determine whether a foreign judgment was given on the merits is to find out whether it was given as a penalty for any conduct of the defendant or whether it is based on a consideration of the truth or otherwise of the plaintiff's case on the evidence. Where the foreign Court has given a decree to the plaintiff not because the defendant was unrepresented or that he

of on the merits and the defendant cannot get the benefit of the exception contained in cl. (b) of S 13, C. P. Code (*Lokur, J.*) GAJANAN SHESHADRI v. SHANTABAI. 41 Bom L.R. 818=A.I.R. 1939 Bom 374.

—S. 20—*Suit on hand-note—Place of issue—Place of contract.*

Cause of action for a suit on a hand note arises either at the place where the transaction takes place or where it is agreed to be performed. But where it is not urged on behalf of the defendant that he was to repay the loan at any place other than the one where the

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PANDEY v.
GANGU AHIR. 102 L.C. 208=O.B.R. 777=12 R.P. 26=A.I.R. 1939 Pat 293.

—S. 21—*Jurisdiction—Two suits in Courts of different jurisdictions—Consolidation and trial in superior Court after transfer—Decree—Appeal by party aggrieved by decree in suit of lower value—*

transferred to the Court of the First Class Sub Judge who framed separate issues but consolidated the two suits and decided them by one judgment and drew up one decree against which the party to the Second Class

C P CODE (1908) S 24

Second Class suit could not be treated as an appeal from the Second Class Court decree which did not exist and that the appeal was properly filed in the Judicial Commissioner's Court (*Davis J C and Weston J*) **11 LUMAL v MICHUMAL**

1 I R (1939) Kar 563=181 I C 982=12 E S 16=A I R 1939 Sind 128

—S 24—Power of Chamber Judge—Transfer of proceeding under S 317, Succession Act

Under S 24 a Judge in Chambers has got jurisdiction to transfer a proceeding under S 317, Succession Act to his own Court at any stage and he can *suo motu* examine the accounts filed under that section so as to pass an order under Cl (4) of that section (*Young C J and Blaker J*) **GULATI v LEEVES BROWN**

41 P L R 872=A I R 1939 Lah 463

—S 24—Same judgment governing several suits—

—S 24—If Court S 23 (5) of Bombay Civil Courts Act See BOMBAY CIVIL COURTS ACT, S 23 (5) **41 Bom L R 892**

—S 24—Refusal to transfer by District Court—Further application to High Court—If lies

The High Court is given general powers of superintendence over inferior Courts and it is not natural to

ABUL RASUL ALI KHAN v BAL NISHAN
1939 A M L J 114

—S 24—S^{ope}—Suit pending in Madras Court
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There is no ground for holding that the High Court for the transfer of a suit Madras Small Causes Court to the Court Judge to be tried along with a connected suit the latter Court is not maintainable under Code S 3 of the Madras City Civil Court but such transfer in view of S 5 of the City Civil

SAHEB LACHHAPPA v CHETTI
1939 M W N 1082=(1939) 2 M L J 841

—S 24 and Provincial Small Cause Courts Act S 35—Transfer to Munsif prior to abolition of Small Cause Court—Decision of Munsif—If appealable

Where cases are transferred under S 24 C P Code

1939 A W E (H C) 325=A I R 1939 All 452
—S 24 (4)—Court of Small Causes—S

tuted in—Transfer to another Court with limits less than value of suit—Jurisdiction Court

Where a suit instituted in a Court of Small Causes having pecuniary jurisdiction to try it is transferred under S 24, C P Code to another Court with Small

C P CODE (1908), S 37.

Cause Court jurisdiction whose pecuniary limit is less than the value of the suit the latter Court has jurisdiction to try the suit (*Edgley J*) **BARADA KANTA v JITENDRA NATH**

183 I C 264=12 E C 162=43 C W N 440=A I R 1939 Cal 345

—S 34 (2) and 152—Scope and effect of—Accidental slip or omission—Decree in accordance with judgment—Omission to award further interest—Amendment—Powers of Court

Where a decree is in accordance with the judgment it cannot be held that there has been an accidental slip or omission which would empower the Court to correct it under S 152, C P Code. If the decree is silent as to the payment of further interest, the Court under S 34 (2) C P Code must be deemed to have refused the same. The Court cannot rectify it in the face of S 34 (2) even if the decree holder ought to have had further

nd this was accidentally overlooked
Patanjali Sastri J) **THIRUGNANA VENUGOPALA PILLAI**

1939 M W N 1165=50 L W 719=(1939) 2 M L J 751

—S 35—Failure of suit on technical ground raised in appeal—Proper order as to costs

Where a suit fails on a technical ground taken for the high if it had been taken earlier e waste of time and money but y event have failed because the remedy the circumstances were

held to be such that each party should be ordered to bear its own costs (*Stone C J and Bose J*) **BADRIDAS v RAJA PRATAPGIR**

—S 35—Suit by executors on legal advice—Ab
sive—Executors if can be asked to pay costs

usual to impose the burden of costs on exe-

Berhampore and confirmed by Madras High Court of Orissa Proven e—Execution ap late—Jurisdiction of Court which in Council S 20—Notification

under—Effect of
On 1-4-1936 the Province of Orissa was constituted and the Court of the Subordinate Judge of Berhampore became thenceforward a Court within the jurisdiction of that province. The respondent who had obtained a decree against the predecessor in title of the appellants

of the powers under S 20 of the Order in Council

Held that as the execution petition was not a pending proceeding the Berhampore Court ceased to have jurisdiction to entertain it, and that it should therefore be

C P CODE (1908) S 38

presented to the Court at Chitole within the Province of Orissa (*King and State v. J. BHAKAR*)
RAGHU BEHARA 184 IC 86 = 12 RM 404 =
49 LW 338 = 1939 MW N 268 =

AIR 1939 Mad 463 = (1939) 1 MLJ 340
—Ss 38 and 39—Sale of property situated outside territorial jurisdiction—Validity—No objection raised by judgment debtor—Effect—Right of an execution creditor to execute decree against property sold

An executing Court has no jurisdiction to sell property situated outside the local limits of its jurisdiction, and if it so sells, the purchaser acquires no title to it. Although the judgment debtor who does not object to the jurisdiction of the Court to sell the property before the sale is confirmed, may be estopped from raising the question that the sale was a nullity, such estoppel does not operate to prevent another execution creditor of the same judgment debtor from proceeding against that property in execution of his decree (*Fazl Ali and Manohar Lal, JJ.*) *KHURD CHANDRA GHOSH v. PANCHU GOPAL* 18 Pat 670 = 20 PLT 685 =
6 BR 783 = 182 IC 616 = 12 RP 23 =
1939 PWN 850 = AIR 1939 Pat 632

—S 39—Copy of decree sent to another Court for execution—Right of decretal Court to proceed with execution.

The Court that passed a decree can itself proceed with its execution although a copy of the decree has been sent to another Court for execution (*Baguley, J.*) *U MAUNG MAUNG v. SHAHUL HANID*
1939 Rang LR 587 = AIR 1939 Rang 433.

—Ss 39 and 42—Decree passed from cognizance of Small Cause to Small Cause Court—Jurisdiction execute—Provincial Small Cause Court 8.

A decree made in a suit which is cognizance of a Court of Small Causes, Sch. II of the Provincial Small Causes, is transferred to a Court of Small Causes for execution under S. 39, C. P. Code. Once such a decree is so transferred by a Court of competent civil jurisdiction, the Small Cause Court would, under S. 42, C. P. Code, be entitled to execute it (*Ghose and Lodge, JJ.*) *NANI GOPAL MUKERJI v. SRISH CHANDRA NANDI*
ILR (1939) 1 Cal 233 = AIR 1939 Cal 600

—S 39—Discretion of Court—Exercise of Section 39 indicates that the Court which passed the decree must apply its mind to the matter when an application has been made for transfer of the decree, and exercise section in a jud. *Akram, JJ.*

—S 39
two Courts—
—Necessity—

41 Bom LR 481.
—S. 39—Scope—Transfer of execution from one Subordinate Court to another—Procedure.

Under S. 39, C. P. Code, it is the decree itself which can be transferred for execution. But a Subordinate

—S 39—Transfer of decree to another Court—When proper.

C P CODE (1908), S 47

Under S. 39, C. P. Code, an order transferring a decree to another Court is not proper when no allegation is made by the decree holder that the judgment debtor has property within the jurisdiction of that Court or is residing there, and the Court does not record any other reasons for transferring the decree to that Court (*Jin Lal, J.*) *CHAMAN LAL v. RAM KANWAR GANLISH DAS* 41 PLR 180

—S. 39 (1) (c)—Court passing mortgage decree for sale—Power to sell property outside territorial jurisdiction

The word 'may' in S. 39, C. P. Code, does not mean 'must,' but implies a discretion in the Court. Sub S. (1) (c) of that section does not, therefore, oust the jurisdiction of the Court which had passed a decree for sale in a mortgage suit to sell any portion of the mortgaged property or any independent item situated outside its territorial jurisdiction, it having had jurisdiction to entertain the suit and to pass the decree by reason of part of the mortgaged property or some other items of mortgaged property being within its territorial limits (*Mitter and Khundkar, JJ.*) *SAKTI NATH ROY CHOUHURY v. REGISTERED JESSORE UNITED BANK, LTD.* ILR (1939) 1 Cal 493 =
70 CLJ 47 = 184 IC 786 = 43 CW N 463 =

AIR 1939 Cal 403
—S 39 (2)—"Competent jurisdiction"—Meaning of.

The words "competent jurisdiction" in S. 39 (2) refer to territorial and pecuniary jurisdiction to deal with the decree and do not mean competency to try the

AMRITSAR. 183 IC 241 = 12 RL 105 (1) =
41 PLR 774 = AIR 1939 Lah 258

—S 41—Transferee Court sending certificate of non-satisfaction to central Court—Latter not transmitting it to decretal Court—Application for execution in decretal Court—Maintainability

The transferee Court sent a certificate of non-satisfaction to the central Court for communication to the decretal Court. But the central Court did not transmit it to the decretal Court, which it was required to do.

—S 47.

Appeal
Applicability.
Bar of suit
Defence to suit
Executing Court.
Execution proceedings.
Necessary parties
Parties and representatives.
Parties to suit
Question relating to execution
Representative.
Scope.

C P CODE (1908) S 47

—S 47—*Appeal—Adjournment of sale to enable sanction of Chief Commissioner being obtained—Nature of order—If appealable*

Where an execution sale is adjourned to enable the sanction of the Chief Commissioner being obtained under S 17 of the Code, the order is an order referable to the Commissioner and is not appealable. (Norman)

1939 A M L J 85

—S 47—*Appeal—Application for transfer of decree—Order on objection opposing transfer*

An application to the Court which passed the decree

be an objection relating to execution of the decree. The words relating to execution of the decree used in S 47 are wide enough to cover the order passed on such objection is an order within the scope of S 47 of the Code and is therefore appealable. (Mitter and Mohamad Akram JJ) v SARADA PROSAD A I

—S 47—*Appeal—Application under Madras Agriculturists Relief Act—Question arising—If one bet*

An order passed on an application under S 20 of the Madras Agriculturists' Relief Act is not an appealable order under S 47 C P Code. The question which arises under S 20 is a question which arises between the executing Court and the applicant and not a question between the parties to the suit. (Burn and Stodart JJ) SWAMINATHA ODAYAR v SRINIVASA IYER

[Note
orders appealable]

under S 47 C P Code, and an appeal

—S 47—*Appeal—Appeal by judgment debtor against surety—Competency*

P obtained a decree against M. The amount of the decree was paid by M. On appeal the decree in favour of P was set aside by the High Court and M applied to the executing Court praying that P should be ordered to repay the amount received by him under the decree. It was also stated that one B had stood surety for P and that the execution should issue against him also. B denied having stood surety for P. The executing Court held that he did not stand surety and dismissed the application. (MATHRA)

in behalf of P
surety. By
question of
of M to take
J) MATHRA

C P CODE (1908) S 47

DAS PURI v ADMINISTRATOR OF LAHORE MUNICIPALITY A I R 1939 Lah 187

—S 47—*Appeal—Appointment of Commissioner to take accounts in execution—Order giving directions to Commissioner as to taking of accounts—Appealability*

Directions to the Commissioner as to taking of accounts in execution are not appealable under S 47 C P Code. It is in the nature of an interlocutory order and not a final order, and therefore there can be no appeal from it. It is only a direction to the Commissioner to take accounts in execution. (MATHRA)

20 Pat LT 796

—Executive for sum less
after reduction under

13 Bihar Act (1A of 1938)—*Appeal—If less*

Where the Court refuses to execute the decree for the

—S 47—*Appeal—Matter in issue between decree holder and judgment debtor—Order on—Appealability*

Where a decree holder who attaches the surplus profits of a ghatwal estate raises objections to certain items in the estimate of receipts and expenditure of the estate, the question is one between the decree holder and the judgment debtor falling under S 47 C P Code on such objections is appealable. (J J) BANSIDHAR SHROFF 180 I C 8—5 B R 344—11 R P 436=1939 P W N 86—A I E 1939 Pat 242

—S 47—*Appeal—Mortgage bond—Provision for instalment payment—Default clause giving mortgagee right to sue for whole amount in case two consecutive payments kept in arrears—Default—Suit for instalments only—Decree—Sale—Objection not be subject to remaining instalments—Appealability*

A decree obtained by a mortgagee for two overdue instalments under a mortgage deed which provides for instalments and contains a default clause giving the mortgagee a right to sue for the whole amount in case of default in payment of two consecutive instalments, the mortgagee's right is put up for sale if the mortgagor raises an objection that the sale cannot be held subject to the remaining instalments of the mortgage debt that is a dispute between the parties arising out of execution and affecting the substantial rights of the judgment debtor and the order on such objection is therefore appealable. (Wadsworth J) SUBBAYYA v VENKATASUBBAYYA 50 L W 775—(1939) 2 M L J 932

—S 47—*Appeal—Necessary party—Action purchaser*

The auction purchaser is not a necessary party in a proceeding arising under S 47 C P Code as between the parties to the suit, nor is his non-joinder in an appeal from an order in such proceedings fatal to it. (Grille and Niyogi, JJ) AZHAR HUSSAIN v

C. P. CODE (1908), S. 47.

MOHAMMAD SHIBLI I.L.E. (1939) Nag 548 =
1939 N.L.J. 270 = A.I.R. 1939 Nag 183
—S 47—Appeal—Order on application under
S 19 Madras Agriculturists' Relief Act—If falls
under

An order on an application under S. 19 of the Madras
Agriculturists' Relief Act made while no proceedings in
execution are pending is not appealable. It cannot be
considered to be a question under S. 47, C. P. Code, in
the absence of any execution proceedings. (*Burn and
Stewart J.J.*) SUBBARAIDU, *In re* 50 L.W. 537 =
1939 M.W.N. 1160 (1) = 1939 2 M.L.J. 609 (1)

[Note—Rules have since been framed making such
orders appealable.]

—S 47—Appeal—Order bringing legal represen-
tatives of deceased decree-holder on record in execution—
Appealability.

An order on application in execution to bring the
legal representatives of a deceased decree holder on
record falls under S 47, and is appealable and provisions
of O 22, Rr. 12, 3 and 4 are not applicable.
(*Davis, J.C. and T.*)
I.L.E. (1933) Kar

—S. 47 and O
sale of mortgaged &
appealable.

—S 47—Appeal—Order for repayment of purchase
money to auction-purchaser under O. 21, R. 93, on
sale being set aside—Appealability.

An order on an application by the auction-purchaser
under O. 21, R. 93, C. P. Code, for repayment of the

between the decree holder
Hence the order is not one
C. J. and Somayya, J.)
MEYYAPPAN SERVAL.

1939 M.W.N. 700 = A.I.R. 1939 Mad 740 =
(1939) 2 M.L.J. 353.

C. P. CODE (1908), S. 47.

the order in effect is essentially an order which ought to
be made under S. 47, C. P. Code, and is, therefore,
appealable. (*Edgley, J.*) NIBARAN CHANDRA v. SK.
DELALATI 43 C.W.N. 419 = A.I.R. 1939 Cal 334.

—S 47—Appeal—Order settling terms of sale pro-
clamation—Appeal—Decision on rights and liabilities
of parties with regard to execution—Res judicata—
Omission to appeal—If can be objected to at later
stage

It is well established that the mere settlement of the
terms of a proclamation of sale, where no dispute betw-

terms of the proclamation the parties put into issue a
question affecting their relative rights and liabilities with
regard to execution, and this matter is heard and decid-
ed, that decision is a judicial decision, and the parties
will not be allowed in the course of execution to canvass
the same matter again. The party aggrieved by that

and if he does not do
se the matter at a later
ASIVAYA MUDALIAR v.
50 L.W. 578 =
(1939) 2 M.L.J. 782.

—S 47—Appeal—Order that executing Court had
of judgment—

dings decides a
lities of the par-
ty the decree, it
decree. But
refer to the con-
section. The
wer to hear the
under S. 47, is

an order which finally and conclusively determines, so
far as the Court passing such order is concerned, a very
important and substantial right which, according to the
decree holder, the Court had no jurisdiction to make.
The decision is one of substance and is not an ordinary

Ram Lall, J.J.)
REHMAT BIBI.
41 P.L.E. 555 =
A.I.R. 1939 Lah. 177

—S 47—Appeal—Order transferring decree to

transmitting a decree for execution to
be said to be a purely ministerial
which amounts to the grant of

C P CODE (1908) S 47

certificate and allows simultaneous execution proceedings to go on in more than one Court is not a mere ministerial order. Such an order is a judicial order falling under S 47 C P Code and is appealable. Such an order cannot be made without notice to the judgment debtor and without hearing him under O 21, R 6 C P Code (*Divalia f*) LAKSHMAN HARI v V G VIRKAR 183 I C 333=12 R B 81=

41 Bom L R 481=A I R 1939 Bom 258

—S 47—Appeal—Order under O 21 R 16

An order passed under the provisions of O 21, R 16

appeal therefore lies from the revision is incompetent
KHIN MAUNG v S K R KA

—S 47—Appeal—
Appeal—Decision as to—
Court or Collector—If
act

Proceedings held under O 21 R 66 C P Code in relation to the proclamation of sale are not orders falling under S 47 and are therefore not appealable but an order as to whether a sale is to be held by the Court

—S 47—Appeal—Rateable distribution—
allowing in respect of money paid into Court
for judgment debtor—Appealability See
S 73 41 Bo

—S 47—Appeal—Sale proclamation—Order refusing to direct value of property to be stated in sale proclamation—If decree

excess recovered—If relates to execution of decree
satisfaction of decree See C F
AND 47

—S 47—Applicability—M

C P CODE (1908) S, 47

judgment debtor whose legal representative he is
(*Dalitp Sis*)
MT REH

—S
tion by legal representative of judgment debtor based on independent title

There is a clear distinction between a money decree and a mortgage decree in cases where the legal representative of the judgment debtor raises an objection which was not open to the judgment debtor but which is based

the legal representative in the for the executing Court to al amount is to be recovered and which property if any of the decree. In the case thod of recovery is determined forms a part and parcel um by the judgment debtor hat certain property is not the mortgage decree is a

A I R 1939 Lah 51 reversed (*Addison and Abdul Rashid ff*) LLOYDS BANK LTD LAHORE v MT REHMAT BIBI 41 P L R 533= A I R 1939 Lah 178 1939 Lah 51]

le—Suit by
irred
on purchaser
is compe
Code The
decree holder auction purchaser does not seek to get

—S 47—Bar of suit—Award on arbitration—
Court merely passing order directing award to be filed
—No judgment passed in accordance with award—
atters covered by
order as decree
opped from con
ecree—Approbate

ng to an award
lowing thereon
directs that the
ating the terms
not executable
decree A separate
s covered by the
Code The fact
decree and files

though it would bind the legal representative as such it does not bind the legal representative who is asserting his own distinctive right as apart from the right of the

statute and the doctrine of approbate and reprobate cannot apply. It applies only to the conduct of parties, and the conduct of the parties is immaterial when the

C P CODE (1908) S 47

moveable property, but after the decree, the property is lost, and money was acquired in its stead, and that

—S 47—Bar of suit—Representative—Purchaser from auction purchaser at sale in execution of money decree—Application for delivery—Obstruction by purchaser in execution of money decree in another small cause suit—Dismissal of application—Suit for possession—Bar of

The second plaintiff had a mortgage over the property of a joint Hindu family consisting of an two minor members. He sued on the mortgage a decree on 23-1-1928 in execution of property was put up for sale and purchase second plaintiff himself on 1-5-1931. He got delivery in execution of the property except one item with regard to which he was obstructed by the defendant and an application by the second plaintiff for removal of resistance was dismissed. On 6-9-1931 second plaintiff sold all his rights to the first plaintiff who on 17-10-1931 applied for removal of the obstruction of the defendant with regard to the one item which had not been delivered to the second plaintiff. But that application was also dismissed on 6-1-1932. The defendant who was the obstructor claimed title to the item in dispute under a purchase in execution of a small cause decree obtained by a stranger against the

mortgage decree. The plaintiff sued a suit against the defendant for recovery. The property had not been delivered to them.

Held, that the first plaintiff the auction purchaser, and the representative of the mortgagors, AIR 1939 Pat 260

Code there being no obstacle by way of limitation or otherwise, on p be required (ARUMUGHA M

AIR 1

—S 47—
for and the
under O 21
that property
ability

Where after actual attachment the property sought transferred by a sale deed to a third purchaser thereupon preferred a claim under C P Code and the property was released attachment by the executing Court, it is certainly open to the decree holder to file a separate suit to get it declared that sold in execution that such a sale and Verma PANDEY

C P CODE (1908) S 47

—S 47—Bar of suit—Second suit for same relief and on same cause of action and between same parties—AIR 1939 Pat 260

41 Bom LR 497.
—Bar of suit—Suit for possession by auction purchaser

Where a decree holder, who is himself the auction purchaser at a Court sale held in execution of his decree seeks to get possession of the purchased property, he does not do so in execution of his decree but by virtue of the title acquired as purchaser, his claim based on such title not relating to the execution discharge or satisfaction of the decree and the provisions of S 47

ut for poses
(DAR MAL v
) Lah 295=
LR 516=
AIR 1939 Lah 211

—S 47—Bar of suit—Suit for possession of land—Execution barred—Second suit—Maintainability—Land on river bank subject to annual inundation during rainy season by reason of flooding of river—If dis possession of defendant or constructive possession of plaintiff

A decree obtained by a person for possession of land, which is left unexecuted by leaving the defendants in possession until the execution of the decree is barred by limitation, bars a second suit for possession by reason of S 47 C P Code. The fact that the land is on the banks of a river which spills over its bank during the

—S 47—Bar of suit—Wrong inclusion of property in sale certificate—Remedy—Suit for correction, if lies

—S 47—Defence to suit—If also barred
S 47, C P Code bars both a suit and defence The

C. P. CODE (1908), S. 47.

SINGH v. BUDDHU LAL.

1939 O.A. 518 =

1939 A.W.R. (C.C.) 94 = 1939 O.W.N. 653

—S. 47—*Executing Court—Description of property in decree incorrect—Amendment—Power of executing Court—Refusal by Court passing decree to amend—Appealability—C. P. Code, S. 151 and O. 43, R. 1.*

Where the description of property directed to be sold by a mortgage decree is incorrect, in the decree itself, the executing Court has no power to amend or rectify it. It is only the Court which passed the decree that can correct the mistake in the exercise of its inherent power under S. 151, C. P. Code. If it corrects the mistake and amends the decree, the amended decree is appealable but if it refuses to do so, the order of refusal is not a decree and is not appealable. Nor would an appeal lie against the order under O. 43, R. 1, as it is not one of the orders mentioned in that rule. (*Lokur, J.*) KRISHNAYA PARBHAYA v. MEGHRAJ PAPARAM. 41 Bom.L.R. 1170

—S. 47—*Execution proceedings—Order for transfer of decree made ex parte—Judgment debtor's right to prefer objections.*

The judgment debtor can prefer objections under S. 47, at any stage of the execution proceedings. Those objections have to be determined on their merits, unless a particular objection had been adjudicated upon by the

A.I.R. 1939 Cal. 651.

—S. 47—*Executing Court—Powers—Contract as to rights and obligations under decree—Enforceability—Bar of separate suit.*

The C. P. Code contains no general restriction of the

may fall to be determined by the executing Court. A fair and ordinary bargain for time in consideration of a reasonable rate of interest, cannot be regarded as an attempt to give jurisdiction to a Court to amend or vary the decree. It has its effect on the parties' rights under the decree and the executing Court under S. 47, C. P. Code, has jurisdiction to grant a legal effect, and to

Court will not have occasion to enforce it in execution

C. P. CODE (1908) S. 47.

that the creditor may perhaps have a separate suit is to misread the Code, which by requiring all such matters to be dealt with in execution discloses a broader view and functions of an executing Court. (*Sir George Rankin*.) OUDH COMMERCIAL BANK, LTD. v. BIND BASINI KUER. 66 I.A. 84 = 14 Luck. 192 =

I.L.R. (1939) Kar. 136 (P.C.) = 11 R.P.C. 176 =

69 C.L.J. 317 = 60 L.W. 39 = 1939 A.L.J. 481 =

41 Bom.L.R. 708 = 1939 P.W.N. 784 =

1939 M.W.N. 692 = 1939 O.W.N. 313 =

43 C.W.N. 501 = 180 I.C. 378 = 1939 R.D. 208 =

1939 O.L.R. 187 = 1939 O.A. 352 =

1939 A.W.R. (P.C.) 43 = 5 B.R. 476 =

A.I.R. 1939 P.C. 80 = (1939) 1 M.L.J. 652 (P.C.).

—S. 47—*Necessary parties—Revision against order dismissing objection to attachability of property—Auction-purchaser—If necessary party.*

An auction purchaser is not a necessary party to an application for revision filed against an order dismissing an objection of the judgment debtor to the attachability of the property (*Addison, J.*) INAYAT v. KARTYAR SINGH. 41 P.L.R. 288 = A.I.R. 1939 Lah. 256.

—S. 47—*Parties and representatives—Execution of decree stayed on judgment debtor executing security bond—Another decree holder attaching property covered by bond and purchasing it in execution—If representa*

he is a representative of the judgment-debtor the meaning of S. 47, C. P. Code.

(*Nasim Ali and Mitter, J.J.*) UPENDRA LAL PAL v. BINOD LAL PAL. 43 O.W.N. 1100.

—S. 47—*Parties and representatives—Purchaser from judgment debtor during attachment—If representative of judgment debtor.*

A purchaser from a judgment-debtor of property

—S. 47—*Parties and their representatives—Representatives—Who are included—Their position, if similar to that of shikast.*

The term 'representatives' occurring in S. 47, C. P. Code, includes not only legal representatives in the sense of heirs, executors or administrators, but also

representative of an ideal person, namely, the idol. The

C P CODE (1908), S 47

—Decree passed against them in personal capacity—Suit dismissed against them as shebait—Such defendants, if parties to suit—Objection by them to sale on ground that property is debutter—Maintainability

In a mortgage suit some of the defendants were impleaded both in their personal capacity and as shebait of an idol. The Court passed a decree against them in their personal capacity and dismissed the suit as against them as shebait.

relating to execution and as they in their capacity as shebait were by virtue of the Explanation to S 47, sale was main

1) SAILENDRA 43 O W N 371

—S 47—Parties to suit—Proper party against whom no relief is claimed—Objection by him in execution dismissed—Right of suit

but who be deemed 47, C P

against a certain property is di way of appeal. He cannot ins R 63, C P Code although his objection was dismissed under O 21 R 58 (Abdul Rashid, f) MALAK CHAND v HARI CHAND KISHEN CHAND

183 I O 816=12 R L 140=41 P L R 126= A I R 1939 Lah 207

—S 47—Parties to suit—Property held by judgment debtor claimed to be wakf—Question as to—If one between parties

The question as to whether the property held by a judgment debtor, which is sought to be sold in execution of a decree is wakf property, in which the judgment debtor has no beneficial interest, is a question arising between parties to the suit in which the decree was passed and can be determined in execution proceedings (Tayab, f) HEMRAJ RADHOWJI v SHAHBHAN

179 I C 692=11 R S 148—A I R 1939 Sind 22

—S 47—Question relating to execution—Decree against assets of deceased—Objection that attached property was not an asset of the deceased—If one under S 47

Where in the case of a decree against the legal representatives in respect of the assets of a deceased a purchaser from such legal representatives after the attachment of the property, objects to its attachment in execution of the decree against the legal representatives, on the ground that it was not part of the assets of the deceased he is raising a question which relates to the execution of the decree in the suit which clearly falls under S 47 C P Code (Celle and Ali, f)

—Release from attachment—Return of property—If can be decided by a separate suit

Where a car was attached in execution of a decree and subsequently as a result of an agreement between the parties the car was released from attachment, the matter of the return of the car is patently a question relating to the execution of the decree arising between the decree holder and the judgment debtor and has therefore to be determined by the Court executing the decree and not by a separate suit. Further a Court

C P CODE (1908) S 47

attaching a car is bound to give the owner every aid in recovering it when the attachment has been removed (Norman, f C.S.) SURAJ MAL v KAILASH 1939 A M L J 25

—S 47—Questions relating to execution—What constitute

Where on the one hand the decree holder alleges that a particular property in the possession of a party to the decree can be proceeded against in execution, and the judgment debtor or his legal representative, as the case may be, states that it cannot be that precisely is the type of question that must be settled only under S 47, C P Code (2) DHURPA

—S 47—Representative—Hindu widow—Suit against by husband's creditor for recovery of debt out of estate—Surrender of whole estate by widow in favour of daughters pending suit—Subsequent decree against widow—Attachment and sale of estate—Suit by daughters to declare property not liable to attachment and sale—If barred

A transferee of the interest of a party before a decree

the estate in his hands, surrenders the entire estate in favour of her daughters and a decree is subsequently passed against the widow, the daughters are not the representatives of the widow within the meaning of S 47, so as to bar a suit by them for a declaration that the property is not liable to attachment and sale in execution of the decree against the widow (Sen, f) SHIVU SHIDDA CHAUGULA v LAKMICHAND TULA JARAM KOTHARI 41 Bom L R 1007= A I R 1939 Bom 496

—S 47 and O 21, R 2—Scope—Adjustment of decree by executory agreement—Validity—Agreement varying time or manner of enforcement of decree and agreement totally adjusting and immediately extinguishing decree—Distinction—Application to execute decree on ground of repudiation of agreement—Main maintainability

A decree can be adjusted or extinguished by an executory agreement if that is the intention of the parties. A compromise agreement varying the time or manner of enforcement of a decree may be a partial adjustment of a decree and can therefore be enforced in execution proceedings in satisfaction of that part of the decree which remains yet unsatisfied, but if the compromise agreement is a total adjustment of a decree, though that agreement may be the subject-matter of a separate suit it cannot be enforced in execution of a decree which is totally adjusted or satisfied. Where it is found that there was a compromise agreement

who was to release the other mortgaged property, and that it was the intention of the parties that this new contract was to extinguish the rights and liabilities under the decree, it must be held that there was an immediate extinguishment and total adjustment of the decree and not an extinguishment dependent on some future contingency. An application for execution of the original decree on the basis of a repudiation of such an agreement has to be rejected by the executing Court which can order the adjustment to be re-ordered.

O. P. CODE (1908), S. 47

(*Datta, J. C. and Loh, J.*) LACHHUMAL v. ATTA MAHOMED KHAN. I.L.R. (1939) Kar 725 = A.I.R. 1939 Sind 343.

—S 47—Scope—Application to set aside decree on ground of death of plaintiff before hearing and decision in suit—Competency.

The executing Court cannot set aside a decree on the ground that it is null and void, but it is open to that Court to see whether the decree under execution was or was not null and void. The question whether a decree is null and void on the ground of the death of a party is one which can be raised in execution, and it is open to a judgment-debtor to apply under S 47 C.P. Code, to have an execution sale set aside on the ground that the plaintiff had died before the hearing and decision of the suit and therefore the decree passed therein is null and void. (*Datta and Lohland, J.J.*) RAM KHELAWAN v. RAMUDAR CHOUHURY. 182 I.O. 208 = 5 B.R. 732 = 12 R.P. 9 = A.I.R. 1939 Pat 534.

—S 47—Scope—Applications under Ss 19 and 20, Madras Agriculturists' Relief Act—If fall under S 47, C.P. Code. See MADRAS AGRICULTURISTS' RELIEF ACT, Ss 19 AND 20. 50 L.W. 851 = (1939) 2 M.L.J. 853.

—S 47—Scope—Objection after confirmation of sale—Maintainability.

An objection under S. 47, C.P. Code, to the effect that the sale should be set aside, cannot be taken after

—S. 47—Scope—Objection to attachability of property by legal representatives of deceased debtor sued as such.

An objection that a certain property is exempt from attachment under S. 60, C.P. Code (read with S. 35 of the Punjab Relief of Indebtedness Act) raised by the legal representative of a deceased debtor, against whom

—S 47—Scope—Objection under S. 60 after sale

tion under S. 60 (1) (c) falls under S. 47. Where such objection is raised before the sale is confirmed, duty of the Court to decide it and to see if it is its duty to sell the property. If it has no jurisdiction to end the execution proceedings by refusing to confirm the sale which so far has

—S 47—Scope—Order under O 21, R. 50 (2) and (3)—If falls under S 47. See COURT FEES ACT (AS

O P CODE (1908), S. 47.

AMENDED IN BOMBAY), SCH. I, ART. I AND SCH. II, ART. 11. A.I.R. 1939 Sind 161 (F.B.).

—S 47—Scope—Plea of debtor—Instalment mortgage bond—Default clause giving right to sue for whole amount on default in payment of two consecutive instalments—Default—Suit for overdue instalments only—Decree for sale—Execution—Plea that suit should have been for whole amount—Competency.

Where in a suit on a mortgage bond providing for payment in instalments with a default clause giving the mortgagee the right to sue for the whole amount in case of default in payment of two consecutive instalments, the mortgagee claims the amount of the defaulted instalments only and the Court passes a decree making the property liable to be sold for the amount due in respect of the two instalments alone, it is not open to the mortgagor to plead in execution that the mortgagee ought to have sued for the entire amount due on the mortgage, and that the mortgagee not having done so, the sale cannot be held subject to the remaining instalments of the mortgage debt in respect of which no suit has been filed. The objection is really not one to the manner of execution so much as to the decree which has been obtained, and must therefore be raised in the suit itself and not in the process of execution. (*Wadsworth, J.*) SUBBAYYA v. VENKATASUBBAYYA. 50 L.W. 776.

—S 47—Scope—Question if attached property of debtor or his son—Decree obtained pending estate of deceased

deceased, falls under S. 47, C.P. Code, and can be raised up to the date of the confirmation of the sale. (*Addison, J.*) INAYAT v. KARTAR SINGH. 41 P.L.R. 288 = A.I.R. 1939 Lah. 256

—S. 47 (2)—Conversion—Appellate Court, if can exercise power.

—S. 47 (3) and O 21, R. 16—Appeal—Order dis-

at a representation, meaning that ion whether a

satisfaction' of that decree is concerned. (*Stone, C.J. and Bose, J.*) SHALIGRAM v. DHURPATI. I.L.R. (1939) Nag 165 = 1939 N.L.J. 82 = 182 I.O. 285 = 12 R.N. 6 = A.I.R. 1939 Nag. 147.

C. P. CODE (1908), S 48.

—S 48—Applicability—Application to revive a prior application—Compromise of execution proceedings—Failure to carry out terms—Application to continue execution—If one for revival.

S 48, C P Code, bars only a fresh application for execution and not an application by which a prior execution application is revived. Where certain execution proceedings were compromised and on the failure of the judgment debtor to pay the instalments as agreed the decree holder applies for continuance of execution application, the bar under S 48 does not apply to it. It is clearly an application to revive an application which remained suspended. (Zia ul Hasan and Bennett, JJ)

PYARE LAL 1939 O W N 94
1939 O A 817=19;

—S 48—Applicability—Decree not capable of execution until the happening of a contingency—Execution—Starting point of limitation.

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executed" cannot be interpreted as meaning the decree as amended (James and Rowland, JJ)

v. HARINAR GIR 18 Pat 395=1939 F W L 18

—S 48—'Fresh application'—Test and not form.

The question of the character of an application for the purposes of S 48 is to be determined by the substance and not the form.

application (Sir George Fankin) OUDH COMMERCIAL BANK, LTD v BIND BASNI KUER.

66 IA 84=14 Luck 192=

1 LE (1939) Kar 136 (FC)=11 R P C 176=

69 C L J 317=60 L W 39=1939 A L J 481=

41 Bom L R 708=1939 M W N 692=

1939 P W N 784=

1939 O W N

180 I O 378=1939 B D 2

1939 O

1939 A W R (P C) 43=

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—S 48—Scope—Execution—Period of limitation—12 years—Court

Ordinarily an execution application which has not been properly made within the 12 years' period prescribed by S 48, C P Code, should not be allowed to be amended so as to deprive the respondent of right of putting for-

—S 48—Scope—If controlled by S 15, Limitation Act See LIMITATION ACT, S 15.

40 Bom L R 1278.

—S 48 and Limitation Act S 6—Period of 12

promoting any application, after the first, which is made more than 12 years after the date of the decree. S 48, C P Code, therefore clearly controls Art 182. If the period of 12 years fixed by S 48 is allowed to be

considered a substitution of one decree for another or any material alteration in the decree which the Civil Procedure Code forbids. But where the parties, keeping the decretal liability unaltered enter into a compromise by which the method of satisfying the decree is changed and the executing Court by its order records the compromise and directs the parties to act upon it, the order must be deemed to be a "subsequent order to pay"

asset, if necessary

possession of the estate or even whether the deceased left any estate. The extent of liability has to be decided in execution (D R. Norman) SRI LAL v MST. JHANKU 1939 A M L J 69.

—Ss 50, 52 and 53—Scope and effect of—Hindu father—Death undivided from son—Administration suit by creditor—Maintainability in the absence of

a suit for the administration of the estate of a Hindu who was no property apart. There is nothing which would sustain a Hindu father dies (Leach, C J. and

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C P CODE (1908) § 53

equally apply to ancestral or joint family property which comes into the possession of the son or other descendant on a partition between him and his father or ancestor. It is deemed to be the property of the father or ancestor (judgment debtor) for the purpose and within the meaning of S 53 C P Code. There is nothing in S 53 which limits the scope of the enquiry or the remedy to

—S 53—Legal representative—If includes Hindu son becoming owner of his father's property by survivorship

The definition of the term legal include a son becoming owner of h by virtue of survivorship for he doe the estate of the deceased and at ar intermeddles with the estate of the deceased. He as a Hindu son is legally bound to provide out of the estate which descends to him maintenance for those persons whom he late proprietor was legally or morally bound to maintain. It cannot be said that the particular property specifically charged for the maintenance can alone be proceeded against. According to Hindu law the property inherited by the heir is liable for the maintenance of the persons entitled to maintenance. If a charge is placed upon a specified property it is only for the sake of convenience and it does not der of the right given by law on th (Almond J C and Scofield J) LUTAJOGINDAR KAUR 184 I O 456 =

—S 53—Scope—Mortgage decree against father—Plea by son that no debt existed—If precluded. See HINDU LAW—DEBTS 1939 M W N 918

—S 55—Arrest where salary not attachable—

Property
Where the salary o no portion of it woul Code to allow a dec arrest of such a judg law ridiculous (D MOHAMMAD

—S 55—Bond

when ordered by Court—(Court permitting him to abs

executed by the surety if that bond provides that he should appear only when ordered by the Court if the Court has permitted the judgment debtor to absent himself, and if he then absconds the bond cannot be enforced against the judgment debtor. But if there is a disobedience by the judgment debtor of an order of Court, whether express or implied to appear *prima facie* the surety is liable under the bond (Davis J C and Tybirk J) PEOPLES BANK, ETC v NANIKRAM ILE (1939) KAR 401—AIR 1939 Sind 270

—S 60—Applicability to distraint

—S 60 House in Istimrari Estate—Attachability

C P CODE (1908) § 60

The occupant of a house in an Istimrari Estate, is entitled on eviction to remove the materials of the house and hence to that extent he has an attachable and saleable interest in the house (D R Norman) MOOL CHAND v DURGA PFRSHAD

1939 A M L J 102
—S 60—Jagir—Grant to person to enjoy so long as any descendant should survive—Prohibition against transfer—Effect—Saleability in execution of money decree. See GRANT—ALIENABILITY 18 Pat 370

—S 60—Property—Preliminary decree for dissolution of partnership and accounts—Attachability—Mode of attachment—O 21 R 53 (4)

A preliminary decree for dissolution of partnership of attach- le though it never- i as pro (4) and

can be attached in the manner provided therein (Fazi Ali and Chatterji, JJ) RATANSHI HIRJI BHOJRAJ v TRICUMJI JIWANDAS 18 Pat 688 = 1939 P W N 839

—S 60—Railway employee—Policy in Mutual Relief Fund—Appointment of nominee—Effect—Decree against employee during life—Attachment of amount under policy after death—Sustainability

A railway employee who was a member of the Mutual

during service and his creditors who had obtained a decree against him in his lifetime proceeded to execute the decree by attachment of the amount of the policy of the deceased in the hands of the fund

—Ss 60 4 and Electricity Act S 5 (f)—Attachment of property of licensee whose licence has been revoked—C P Code how affected by the Electricity Act—Scope of S 5 (f) of the Electricity Act

Where the judgment debtor is a licensee whose licence under the Electricity Act has been revoked the Court when it has to consider whether under S 60 C P Code his property is or is not liable to attachment and sale in execution of the decree has to bear in mind S 4 C P Code. As the Electricity Act is a special law the provisions under the C P Code are subject to any conditions regulating that procedure by the provisions of the Electricity Act. When a licence is revoked certain provisions laid down by S 5 of the Act have an imperative effect and under those provisions the licensee has the option of disposing the property of the undertaking in such manner as he thinks fit under Cl (f) only. That clause is more or less subsidiary and comes into operation only when the preceding provisions in the

C. P. CODE (1908), S. 60.

earlier clauses have been complied with. *Iqbal Ahmad and Basant, JJ*) RADHA KRISHNA BENI PRASAD v. KISHORE CHAND SHIVA CHARAN LAL.

1939 A L J 983=1939 A.W.R. (H.C.) 848.
—S 60 Prov (1) Cl (b)—Construction—'implements of husbandry'—Engine or water-pump used by agriculturist for irrigation of fields.

The term 'implements of husbandry' in Cl (b) to Prov (1) to S. 60 should be interpreted in a fair and reasonable and even a generous spirit and not in a narrow and mean manner. The clause is not intended to force agriculturists back to primitive ways but to protect them in their livelihood as agriculturists by preventing the attachment even of those mechanical means

as an agriculturist and therefore it comes within the term 'implements of husbandry.' (*Datta, J.C. and Tyagi, J*) UDHARAM DALUMAL v. ROZI SHAHABE. I.L.R. (1939) Kar 499=181 I.C. 250=

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—If cum.

All the (1), proviso, etc., are on the same line. The exemptions provided thereunder are and any man is entitled to all the benefits confined to one only, if he is qualified (*Baguley, J.*) MUNICIPAL CORPORATION RANGOON v. RAM BEHARI.

1939 Rang A.I.R. 1939 Rang 432.

—S 60 (1) (b) and (c)—'Agriculturist'—Test. The word 'agriculturist' in S. 60, C. P. Code, may be defined as meaning a person who personally engages himself in the occupation of tilling the soil and who derives his livelihood from that occupation and cannot or does not maintain himself from other sources. It is not meant thereby that the sole source of his income or the main source of his income must be tilling the soil. No doubt in a ready test would be afforded source of income or the sole source is not an absolutely correct whether a man personally engages in tilling and whether this occupation is essential to his maintenance (*Dalip Singh, Monroe and Ram Lal, JJ*) NIHAL SINGH v. SRI RAM. 184 I.C. 261=12 R.L. 190=

41 P.L.R. 560=A.I.R. 1939 Lah 388 (F.B.)
—S 60 (1) (c)—'Agriculturist'—Meaning of. Protection given by S. 60 is intended to be given to those who are real tillers of the land within the meaning of S. 60, is a person dependent for his living on tilling of soil maintain himself otherwise; main, chief source of income are not the proper test. A person claiming protection under S. 60, is a large land-

QARZA 180 I.C. 242=11 R.L. 666=41 P.L.R. 225=A.I.R. 1939 Lah 40

—S 60 (1) (c)—'Agriculturist'—Determination of status—Material time—Property attached when in possession of legal representative of debtor—Status of legal representative—If material.

The question whether the judgment-debtor is an 'agriculturist' within the meaning of S. 60, C. P. Code,

C. P. CODE (1908), S. 60.

has to be decided with reference to his status at the date of the attachment. If he becomes an agriculturist at the date of the attachment, his property cannot be attached although at the time of the decree he was not an agriculturist. Similarly if he ceases to be an agriculturist at the time of the attachment, his property can be attached although he was an agriculturist at the date of the decree. Where, therefore, property is attached while in possession of the legal representative of the debtor, it is the status of the legal representative and not that of the original debtor that determines the attachability or otherwise of the property (*Dalip Singh, J*) BALDEV SINGH v. SHER SINGH 41 P.L.R. 524=A.I.R. 1939 Lah 556.

agriculturist—Dismissal—Sons, if can

against a father of a joint family, the father objects to the sale of his house on the ground of its being exempted under S. 60 (1) (c), C. P. Code, from such a sale, but it is dismissed for default and the house is sold, it is not open to the sons

those in their (F.B.) 602=521=431=A.I.R. 1939 AN 399 (F.B.).

—S. 60 (1) (c) (as amended by Punjab Relief of Indebtedness Act)—House of insolvent—Exemption

If the insolvent was not engaged in the occupation of tilling the land on the date of order of his adjudication and there is nothing to indicate that he maintained himself solely or mainly by agriculture at that time, his attachment and sale under as amended by the Punjab (Teh Chand J) ANAR 41 P.L.R. 663=A.I.R. 1939 Lah. 537.

—S 60 (1) (c) as amended by S 35 of Punjab Relief of Indebtedness Act—Judgment debtor's house lent to and occupied by his sons who are independent proprietors—Exemption from attachment.

Where the house of the judgment-debtor was not occupied by him but was lent to and occupied by his

SULTAN v. OFFICIAL RECEIVER. 182 I.C. 631=12 R.L. 61=41 P.L.R. 377 (1)=A.I.R. 1939 Lah 50.

—S 60 (1) (c)—Scope—Agriculturist waiving objection to attachment and sale of house—Effect

There is no statutory bar to an agriculturist voluntarily alienating his houses. The bar under S. 60 is against the compulsory sale of such a house in execution of a money decree. Where therefore an agriculturist waives objection to attachment and agrees to the sale of the houses in execution of the decree, S. 60 does not protect the houses from attachment and sale. A.I.R. 1935 Lah. 164, Foll. (*Teh Chand, J*) NATHA SINGH v. BHAG MAL. A.I.R. 1939 Lah. 316

C P CODE (1908), S 53

equally apply to ancestral or joint family property which comes in the possession of the son or other descendant on a partition between him and his father or ancestor. It is deemed to be the property of the father or ancestor (judgment debtor) for the purpose and within the meaning of S 53 C P Code. There is nothing in S 53 which limits the scope of the enquiry or the remedy to

—S 53—Legal representative—If includes Hindu son becoming owner of his father's property by survivorship.

The definition of the term 'legal representative' does include a son becoming owner of his father's property by virtue of survivorship for he does represent in law the estate of the deceased and at any rate it is he who intermeddles with the estate of the deceased. He as a Hindu son is legally bound to provide out of the estate which descends to him maintenance for those persons whom the late proprietor was legally or morally bound to maintain. It cannot be said that the particular property specifically charged for the maintenance can alone be proceeded against. According to Hindu law the property inherited by the heir is liable for the maintenance of the persons entitled to maintenance. If a charge is placed upon a specified property it is only for the sake of convenience and it does not derogate of the right given by law on that point. (Almond J C and Scofield J) AITA JOGINDAR KAUR 184 IC 456 =

A I L W 1939 SIND 270

—S 53—Scope—Mortgage decree against father—Plea by son that no debt existed—If precluded. See HINDU LAW—DEBTS 1939 M W N 918

—S 55—Arrest where salary not attachable—Property

Where the salary of a judgment debtor is such that no portion of it would be attachable under S 60 C P Code to allow a decree for arrest of such a judgment debtor would be law ridiculous. (D) MOHAMMAD

—S 55—Bond when ordered by court absent himself—Latter under bond

The fact that a judgment debtor is a person has stood surety absconds involve a breach of the condition executed by the surety if that bond provides that he should appear only when ordered by the Court, if the Court has permitted the judgment debtor to absent himself, and if he then absconds the bond cannot be enforced against the judgment debtor. But if there is a disobedience by the judgment debtor of an order of the Court, whether express or implied to appear, the surety is liable under the bond. (D) I L R (1939) KAR 401 = A I R 1939 SIND 270

—S 60—Applicability to distraint Distress is not permitted under C P Code and provisions of S 60 cannot be applied by analogy to distraint. (D) GHULAM KHADIR v MOHIDIN HAH AHMED I L R (1939) KAR 566 = 184 IC 698 =

A I R 1939 SIND 276

—S 60 House in Istimari Estate—Attachability

C P CODE (1908), S 60

The occupant of a house in an Istimari Estate, is entitled on eviction to remove the materials of the house and hence to that extent, he has an attachable and saleable interest in the house. (D R Norman) MOOL CHAND v DURGA PRASHAD

1939 A M L J 102

—S 60—Jagir—Grant to person to enjoy so long as any descendant should survive—Prohibition against transfer—Effect—Saleability in execution of money decree. See GRANT—ALIENABILITY 18 Pat 370

—S 60—Property—Preliminary decree for dissolution of partnership and accounts—Attachability—Mode of attachment—O 21, R 53 (4)

A preliminary decree for dissolution of partnership and for accounts is property which is capable of attachment within the meaning of S 60 C P Code though it may not be capable of immediate execution, it nevertheless creates rights which must be regarded as property. Such a decree falls under O 21, R 53 (4) and can be attached in the manner provided therein. (Fazl Ali and Chatterji JJ) RATANSHI HIRJI BHOGRAJ v TRICUMJI JIWANDAS 18 Pat 688 =

1939 P W N 839

—S 60—Railway employee—Policy in Mutual Relief Fund—Appointment of nominee—Effect—Decree against employee during life—Attachment of amount under policy after death—Sustainability

A railway employee who was a member of the Mutual

during service and his creditors who had obtained a decree against him in his lifetime proceeded to execute the decree by attachment of the amount of the policy of the deceased in the hands of the fund.

Held that the deceased had no interest in the Relief Fund which passed on his death to his legal representatives as the ownership of the Relief Fund and therefore

—Ss 60 4 and Electricity Act S 5 (f)—Attachment of property of licensee whose licence has been revoked—C P Code how affected by the Electricity Act—Scope of S 5 (f) of the Electricity Act

see whose revoked, the S 60 C attachment and sale in execution of the decree has to bear in mind S 4 C P Code. As the Electricity Act is a special law the provisions under the C P Code are subject to any and all provisions regulating that procedure by the provisions of the Electricity Act. When a licence is revoked certain provisions laid down by S 5 of the Act have an imperative effect and under those provisions the licensee

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C P. CODE (1908), S. 60.

earlier clauses have been complied with, (*Iqbal Ahmad and Baitari, JJ*) RADHA KRISHNA BENI PRASAD v. KISHORE CHAND SHIVA CHARAN LAL.

1939 A L J 933 = 1939 A W R. (H C) 818

—S 60 Prov. (1). Cl (b)—Construction—'Implementments of husbandry'—Engine or water-pump used by agriculturist for irrigation of fields

The term 'implements of husbandry' in Cl (b) to Prov (1) to S. 60 should be interpreted in a fair and reasonable and even a generous spirit and not in a narrow and mean manner. The clause is not intended to force agriculturists back to primitive ways but to protect them in their livelihood as agriculturists by preventing the attachment even of those mechanical means whereby they plough and irrigate and cultivate the soil and obtain their livelihood as agriculturists. An engine or a water-pump is necessary for the agriculturist to irrigate and cultivate his fields and earn his livelihood as an agriculturist and therefore it comes within the term 'implements of husbandry.' (*Dutt, J C and Tysan, J*) UDHARAM DALUMAL v ROZI SHAMBE

I.L.R. (1939), Kar 499 = 181 I.O. 250 =

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—If cum.

All the sections relating to (1) to (4) under S. 60 (1), proviso, C P. Code, are on the same footing, and the exemptions provided thereunder are cumulative, and any man is entitled to all the benefits and not confined to one only, if he is qualified to do so (*Baguley, J*) MUNICIPAL CORPORATION OF RANGOON v. KAM BEHARI.

1939 Rang L.R. 504 =

A.I.R. 1939 Rang 432.

—S 60 (1) (b) and (c)—'Agriculturist'—Test.

The word 'agriculturist' in S. 60, C P. Code, may be defined as meaning a person who personally engages himself in the occupation of tilling the soil and who derives his livelihood from that occupation and cannot or does not maintain himself from other sources. It is not meant thereby that the sole source of his income must be tilling the soil. No doubt in a ready test would be afforded source of income or the sole source is not an absolutely correct whether a man personally engages in tilling and whether this occupation is essential to his maintenance (*Dalip Singh, Monroe and Ram Lal, JJ*) NIHAL SINGH v SRI RAM.

181 I.O. 261 = 12 R.L. 190 =

41 P.L.R. 560 = A.I.R. 1939 Lah 388 (F.B.)

—S 60 (1) (c)—'Agriculturist'—Meaning of.

Protection given by S. 60 is intended to be given to those who are real tillers of the land within the meaning of S. 60, is a person dependent for his living on tilling of soil to maintain himself otherwise, main, et

C P. CODE (1908), S. 60

has to be decided with reference to his status at the date of the attachment. If he becomes an agriculturist at the date of the attachment, his property cannot be attached although at the time of the decree he was not an agriculturist. Similarly if he ceases to be an agriculturist at the time of the attachment, his property can be attached although he was an agriculturist at the date of the decree. Where, therefore, property is attached while in possession of the legal representative of the debtor, it is the status of the legal representative and not that of the original debtor that determines the attachability or otherwise of the property (*Dalip Singh, J*) BALDEV SINGH v. SHER SINGH

41 P.L.R. 521 =

A.I.R. 1939 Lah 556.

—S 60 (1) (c)—House of agriculturist—Dismissal of father's objection in execution—Sons, if can re-agitate it, by separate suit

Where in execution of a decree against a father of a joint family, the father objects to the sale of his house on the ground of its being exempted under S. 60 (1) (c), C. P. Code, from such a sale, but it is dismissed for default and the house is sold, it is not open to the sons

being that inasmuch as the father had represented the sons in the execution proceedings, the decisions in those proceedings are as much binding on them as on their father. (*Thom, C. J., Collister and Ganga Nuth, JJ.*)

All 602 =

L.R. 521 =

H.C. 431 =

A.I.R. 1939 All 399 (F.B.)

—S. 60 (1) (c) (as amended by Punjab Relief of Indebtedness Act)—House of insolvent—Exemption.

If the insolvent was not engaged in the occupation of tilling the land on the date of order of his adjudication and there is nothing to indicate that he maintained

agriculture at that time, his

attachment and sale under

as amended by the Punjab

t. (*Tek Chand, J.*) AMAR

41 P.L.R. 663 =

A.I.R. 1939 Lah. 537.

—S 60 (1) (c) as amended by S. 35 of Punjab Relief of Indebtedness Act—Judgment-debtor's house lent to and occupied by his sons who are independent proprietors—Exemption from attachment

Where the house of the judgment-debtor was not occupied by him but was lent to and occupied by his sons who were independent proprietors and were living

A.I.R. 1939 Lah 50.

—S 60 (1) (c)—Scope—Agriculturist waiving objection to attachment and sale of house—Effect

There is no statutory bar to an agriculturist voluntarily alienating his houses. The bar under S. 60 is against the compulsory sale of such a house in execution of a money decree. Where therefore an agriculturist waives objection to attachment and agrees to the sale of the houses in execution of the decree, S. 60 does not protect the houses from attachment and sale. A.I.R. 1935 Lah. 164, Foll (*Tek Chand, J.*) NATHA SINGH v. BHAG MAL.

A.I.R. 1939 Lah. 316

—S. 60 (1) (c)—'Agriculturist'—Determination of status—Material time—Property attached when in possession of legal representative of debtor—Status of legal representative—If material

The question whether the judgment-debtor is an 'agriculturist' within the meaning of S. 60, C. P. Code,

C P CODE (1908) S 60

—'as amended in 1937), S 60 (1) (h)—
Construction and scope of

On a consideration of the entire S 60 C P Code there is no doubt that the latter part of Cl (h) of sub S (1) protects from attachment in execution of a decree salary of all persons in receipt thereof other than public officers and servants of a railway company or local authority (*Lobo J*) *HORMASJI JAMSHEDJI In re* 182 IC 185=12 R S 1=

AIR 1939 Sind 134

—(as amended in 1937) S 60 (1) (h)—
Interpretation—Principle of

Cl (h) of sub S (1) of S 60 should be interpreted with reference to the entire section and any interpretation founded upon that clause alone would be an afe and unwarranted by all canons of interpretation (*Lobo J*) *HORMASJI JAMSHEDJI In re*

182 IC 185=12 R S 1=AIR 1939 Sind 134

—S 60 (1) (i)—*Applicability—Ghatwal*
Profits accruing to ghatwal—Attachability in
of decree against him

The profits accruing to a ghatwal from his not his salary within the meaning of S 60 C P and is not on that account exempt The surplus profits of the estate after outgoings are to be regarded as the p of the ghatwal and are therefore liable execution of a decree against him (*Chatterji, JJ*) *HANSIDHAR SHROFF & ASHUTOSH*

180 IC 8=5 BE 344=11 EP 436=1939 PWN 86=AIR 1939 Pat 242

—S 60 (1) (i)—*Attachment of salary—Compromised by judgment debtor waiving objection—Validity*

It is open to a judgment debtor to enter into a com

—S 60 (1) (k)—*Subscriptions payable to Provident Fund—Exemption*

The definition of Compulsory d Provident Funds Act applies to referred to in S 60 (1) (k) C P 'subscriptions to or deposits in' judgement debtor is therefore entitled to claim exempt

payment it becomes a subscription to the Fund and a subscription to the Fund is a compulsory deposit and therefore exempted There is no intervening moment when it is susceptible of attachment (*Boguley J*) *MUNICIPAL CORPORATION OF RANGOON & RAM BEHARI*

1939 Rang LR 504=

AIR 1939 Rang 432

—S 60 (1) (l)—*Attachment of salary in contra*
vention of—Content of judgment debtor—Effect of

S 60, C P Code is a prohibition only against forcible attachment or sale and there is to prevent a judgment debtor from cons attachment of half of his salary although

C P Code it is necessary that several decree holders, who are executing their decrees against the same judgment debtor, in different Courts must have attached the same property or certain common properties belonging to the judgment debtor In such cases, the sale proceeds

C P CODE (1908) S 64

of the attached property would have to be distributed amongst all the attaching decree holders by the superior Court or the Court which has first made the attachment in accordance with the section Where therefore the rival decree holders have not attached any of the properties belonging to the judgment debtor they cannot invoke the provision of S 63 (*S K Ghose and Mukherjee, JJ*) *FATIMA KHATUN & ASHANANDA BEHARA* ILR (1939) 1 Cal 488

—Ss 63 (1) and 73 (1)—*Attachment by Courts of different grades—Sale and realisation by superior Court—Attaching to holder of inferior Court if can apply to superior Court for rateable distribution*

Where the holder of a Munsif's Court decree obtains from that Court an order for attachment in execution, of certain property of the judgment debtor and the holder of a decree in the Subordinate Judge's Court

CHAND & GURDIAL PRASAD

ILR (1939) All 162=180 IC 714=

11 RA 516=1938 AWR (HC) 870=

1939 ALJ 4=AIR 1939 All 159.

—S 64—*Applicability and scope—Attachment before judgment—Requisites of validity—Mere order of attachment—Sufficiency—Private transfer—When void—Non-compliance with formalities of due attachment—Effect on private alienation*

An attachment before judgment under O 38 R 7, C P Code has to be effected in the same manner as in decree and in the case of provisions of O 21 R 54, tied with A mere order of unless all the processes of to effect a valid attachment

—S 64—*Construction—'Private transfer'—Transfer by arrangement between parties effected in*

64, C P. solely by the act of parties and not as a result of a judicial decision. If in realty there has been a transfer by the private act of parties it does not cease to be private by being given

41 Bom LR 473=AIR 1939 Bom 212.

—S 64—*Scope—Attachment of movable property in British India—Subsequent adjudication of judgment debtor as insolvent by foreign Court—Effect of—Private international law—Attachment subsequent to adjudication—If prevails against foreign receiver*

O. P. CODE (1908), S. 64

An adjudication of a person as insolvent by a foreign Court operates as a private transfer within the meaning of S. 64, C. P. Code. On such adjudication, the only property that vests in the receiver is the movable property which the insolvent was free to assign on the date of the adjudication and such property vests by virtue of private international law. But the adjudication does not affect the rights of a creditor who has attached, before adjudication the movable property of the insolvent. He remains entitled to the benefits of his attachment. But an attachment after adjudication by a foreign Court is entirely a different matter. The receiver of the foreign Court is entitled to all the free assets of the insolvent, assets which were free at the date of the adjudication, and they must be deemed to be the moneys left over after satisfaction of the claims of the creditors who had attached before the adjudication. The provisions of Ss 64 and 73 do not override the rule of private international law, and creditors who attach after the foreign adjudication cannot claim anything out of the assets on the ground that they have claims enforceable under the attachment (*Leach, C J and Kunkri Raman, J.*) **VEERANNA SHA v OFFICIAL RECEIVER OF SECUNDERABAD** 50 LW 701—(1939) 2 MLJ, 859

—S 64—Scope and effect of—Contract by judgment debtor for sale of property to another—Subsequent attachment of property—Sale in pursuance of contract—If void against attaching creditor—Insolvency of judgment-debtor—Sale by Official Receiver in terms of

O. P. CODE (1908), S. 68.

v HANMAPPA.

41 Bom LR 913=
AIR. 1939 Bom. 492.

—S. 64—Scope—If invalidates sale in execution of another decree

Under S. 64, C. P. Code, the attachment only serves to prevent a private transfer of the property and cannot invalidate a judicial sale in execution of another decree (*Bhidi, J.*) **PREM CHAND v MULKH RAJ.**

41 PLE 305=AIR 1939 Lah 380

—S 64—Scope—Order allowing claim to attached property—Transfer by successful claimant before suit to set aside claim order—If void. See C. P. CODE, O 21, R. 63. 17 Pat 588.

—S. 66—Applicability—Purchase out of joint fund at Court auction—Certificate in the name of one—Suit by others, for possession, if barred by S. 66

Where three persons agree to purchase certain property at a Court auction sale and it is so bought out of funds contributed by each in certain agreed shares, but the certificate was issued in the name of one of them, a suit by the others for possession is not affected by S. 66, C. P. Code, for it has no application to such a case. It is not a case of some agreement secret or otherwise whereby A buys in B's name. The plaintiffs' right springs out of the fact that the purchase was made out of joint fund contributed to by the three persons (*Stone, C J and Bose, J.*) **BHUDARSAO v SAMARATHMAL.** 1939 N L J. 539

—S 66—Effect of
The consequence of S. 66 is that unless the action

the judgment-debtor in the property which is all that is attached, is on the date of the attachment qualified by

trial of the case to rely on other grounds which had not been the subject of trial or adjudication in the Court which took the property.

Attachment before judgment—Sale of property subsequently in pursuance of contract made prior to attachment—Priority over attachment.

S. 64 and O. 38, R. 10, C. P. Code, must be read together. S. 64 applies to an effective attachment; under O. 38, R. 10, an attachment before judgment is not

—S 68—Scope—Status of judgment-debtor as agriculturist—When to be considered—Material date—Compromise agreeing to give up plea as to status—Order for sale—Subsequent claim for transfer of proceedings to Collector—If barred—Duty of Court

Under S. 68, C. P. Code, a judgment-debtor is to be

C P CODE (1908), S 73

the status of the debtor is to be considered is the date on which the order for sale is passed. If on a date prior to the order for sale the judgment debtor agrees under a

on the date of the order for sale he was an agriculturist. But if the judgment debtor fails to put forward his contention that he is an agriculturist to claim transfer of proceedings to the Collector when he is in notice under O 21, R 66 for settlement of the the proclamation, and the Court makes an order and issue of proclamation, that order becomes on the judgment debtor and conclusive unless he takes

" "

judgment debtor by way of execution of ex parte decree. Fresh decree passed after execution—Right of other tribution—Order of rate.

S 73, C P. Code, does not apply to monies paid into Court in a suit when no question of execution arises. The monies are held by the Court as a stakeholder.

to be applied for payment of the debt that it cannot apply the money in pa of B. The Court cannot commit substance a breach of trust. The an ex parte decree against the defendant applied to execute it. The defendant asked for a stay of execution and the Court granted a stay on condition that he gave security. The defendant produced a surety who executed a surety bond for a sum of Rs 3,400, agreeing that the defendant should submit to and discharge his liabilities on the decree or order which decree or order would be passed. He also undertook that if the defendant failed to act accordingly pay into Court the sum of Rs 3,400. The decree was subsequently set aside. On an application by the latter f deposited the sum of Rs 3,400 into Court. Two other persons who had obtained decrees against the same defendants in other suits long after the stay of execution in respect of the plaintiff's decree applied for rateable distribution out of the sum of Rs 3,400.

Held, that the Court has no power to distribute the plaintiff's debt, should not be paid by somebody else's debt, and the amount of surety was not therefore distribution.

Held further, that the qu

C P CODE (1908), S 73

181 I C 216=11 E B 331=41 Bom L R. 176=

A I R 1939 Bom 112

—S 73—"Assets held by a Court"—Money paid

section are wide enough to cover not only the money which the judgment-debtor is compelled to pay, but also money voluntarily paid into Court by him to satisfy a debt. The money is held by the Court for the benefit of the judgment-debtor under O 21, R. 55, C P. Code, under S 73, when all the money paid by the judgment-debtor is earmarked by the operation of which would compel the

" "

judgment debtor by way of execution of ex parte decree. Fresh decree passed after execution—Right of other tribution—Order of rate.

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41 Bom L R 99=A I R 1939 Bom 468
—S 73 and O 21, R 48—Attachment of salary—Rateable distribution—If applies

The rule relating to rateable distribution applies to attachments of salary. No inference can be drawn from O 21, R 48, C P. Code, to the effect that the intention was to make an exception from that rule. Further O 21, R 48 cannot override the substantive provision in

—S 73—Construction—"Decrees passed against the same judgment debtor"—Separate decrees against father and sons, but executable against same estate

The language of S 73 (1), C P. Code, is clear and unambiguous and as it stands it is not possible to hold

" "

judgment debtor by way of execution of ex parte decree. Fresh decree passed after execution—Right of other tribution—Order of rate.

—S 73—"Assets held by a Court"—Money paid

C P. CODE (1908), S 73

before it to another Court at its bidding (*Lokur, J.*)
 NINGAPPA v ADIVEPPA 41 Bom L R. 897 =
 A I R. 1939 Bom 468

—S 73—Procedure—Application for execution—
 Necessity—Attachment by Munsif's Court and Sub-
 Court—Realisation by Sub-Court—Munsif's Court
 decree holder, if should follow procedure laid down by
 S. 73 (1) *See* C. P. CODE, Ss. 63 (1) AND 73 (1)

1938 A W R (H O) 870

—Ss 73 and 145—Realisation from surety—
 Another decree holder against same judgment debtor—
 If can claim rateable distribution

Where there has been a realisation from the surety in
 respect of a decree, a different decree holder as against
 same judgment-debtor, is not entitled to rateable
 distribution out of that realisation (*Pollock, J.*)
 SAKHARAM v. MAHADEO 1939 N L J 534

—S 73—Right to apply—Holder of mortgage
 decree.

A mortgage decree passed under the provisions of
 O 34, which directs that the amount due to the decree
 holder shall first be paid out of the sale proceeds of the
 mortgaged property is not a personal decree at first
 instance even as regards costs and hence the holder of
 such a decree cannot claim rateable distribution. (*Bhide,*
J.) ALLAHABAD BANK, LTD. v. PUNJAB NATIONAL
 BANK. A I R. 1939 Lah 303

—S 73 (2)—Scope of.

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 rate
J. LAL CHAND NARAYAN JINDA NANI

184 I C. 589 = 12 R A. 253 =

1933 A W R (H O) 427 = A I R. 1939 All 545

—S. 73 (3)—Decree in favour of Crown—Priority.

When the Crown and a private individual both exe-

sentative to attach the fund before claiming payment.
 A pauper appellified by the judgment-debtor from a
 decree passed against him was dismissed and he was

C. P. CODE (1908) S 91

A manager of an estate appointed under the provi-
 sions of the Court of Wards Act, 1879, is not a public
 officer within the meaning of S 2 (17), (g), C P Code,
 but is a public officer within the meaning of S. 2 (17)
 (A). C. P. Code, being an officer in the service of the
 Government. He is, therefore, entitled to the benefit of
 a notice under S 80, C P Code (*Edgley, J.*) GOKUL
 CHANDRA DAS v. MANAGER OF B M W ESTATE
 43 C W N. 1212 = A I R. 1939 Cal 720

—Ss 80 and 2 (17) (h)—Public officer—Liquidator
 of a co-operative society appointed under S 42 of the
 Cooperative Societies Act—Suit against under O 21,
 R. 63—Notice—Necessity

The liquidator appointed under S. 42 (1) of the
 Co-operative Societies Act is appointed by Government
 and performs public duties and hence he is an officer in
 the service of Government, when acting as liquidator
 and is therefore a 'public officer' as defined in S 2 (17)
 (h) C P Code. In a suit under O 21, R. 63 against
 such liquidator, notice should be given as required by
 S. 80, C P Code (*Pollock, J.*) LIQUIDATOR OF THE
 SOCIETY, SANGAKED KALAN & Co v. AYODHYA
 PRASAD 182 I C 514 = 12 R N. 8 =
 1939 N L J 215 = A I R. 1939 Nag 232.

—S 80—Two notices—Suit filed before expiry
 of two months from second notice—If premature
 A suit brought after the expiry of two months from

—S. 85—Order signed by Chief Secretary—Validity.

An order dated 20th June, 1935, and signed by the
 Chief Secretary of the Punjab Government appointing a
 person to prosecute or defend all suits on behalf of or
 against the Jammu and Kashmir State unless it is
 after the Government of India
 (n Laws) Order, 1937. (*Addition*
 MAHARAJA OF JAMMU AND
 MUNICIPALITY.

104 I C 488 (1) = 12 R L 229 (1) =

A I R. 1939 Lah 279.

—S 89—"Any other law"—If includes O. 23,
 R. 3

other law for the time being in force"

cannot include O. 23, R. 3, C. P.

Ge. Mysa Bu and Mosely, J.)

1939 Rang L R 280 =

183 I C. 343 = 12 R R 71 =

A I R. 1939 Rang 300 (F.B.).

89 and O. 23, R. 3—Arbitration and award
 of Court—can be given effect to—"Any other law"

Code. The words 'any other law'
 C P Code do not include the new

Held, that the order was proper
 circumstances the Crown had prior
 holder in respect of the amount of
 Chand, J.) MUNI LAL v DIWAN

A I

—Ss. 80 and 2 (17) (g) and (c)
 —Court of Wards manager.

for establishing public right of way and for removal of

C P CODE (1908), S 91

obstruction—Maintainability without sanction of Advocate General—Proof of special damage—Necessity

A suit for establishing a public right of way and removal of obstruction which constitutes a public nuisance can be maintained by a plaintiff without the sanction of the Advocate General under S 91, C P Code, and without proof of special damage. S 91, C P Code though it provides a remedy by getting the sanction of the Advocate General—a remedy which in many of these cases will be financially out of reach of the parties expressly safeguards any other remedy which may exist. The English rule requires special damage in cases in which a member of the public is seeking the removal of an obstruction to not apply to India. (*Wadsworth, CHETTY v KUPPUSAMI CHETTY*)

I L R (1939) Mad 870=49 L W 334=
1939 M W N 259=A I R 1939 Mad 691=

(1939) 1 M L J 392.

—S 91—Scope—Suit by particular class of public claiming right of way over village path—Maintainability—Sanction of Advocate General—Necessity—Proof of special damage

Under S 91, C P Code the consent of the Advocate General is necessary for a suit with regard to a public

a passage—If affected by S 91

Where a particular passage or way is not a highway and where certain persons bring a suit for personal right to the use of the passage or way barred by S 91 C P Code for the plaintiff.

—S 92—Applicability—Hindu leaving movable and immovable large properties—Wills left by deceased giving considerable properties to trusts and charities and maintenance to widow—Suit by latter claiming higher maintenance according to Hindu Law and challenging wills—Sanction—Necessity

under the wills and the trustees under the trust deed contesting the validity of the wills, etc. and claiming maintenance suitable to her requirements and status in life under

C P CODE (1908) S 92

—S 92—Applicability—Matter pertaining to administration of religious trust—Temple trustees removing namams in temple and on temple articles and putting different namams—Suit in respect of—Suit to compel trustee to take out duty in procession on certain occasions—Sanction—Necessity

Matters pertaining to the administration of a religious trust must be distinguished on the one hand from matters of ritual and on the other from the individual right of worship. Where the complaint is that the trustees of a

C P Code is adopted. So also a claim to compel the trustees of a temple to take in procession certain idols within the precincts of the temple on certain occasion, is one falling within S 92 C P Code and is not maintainable without sanction. (*Venkatasubba Rao and Abdur Rahman, J J*) *AIYANACHARIAR v SATAGOPA CHARIAR*
1939 M W N 418=

A I R 1939 Mad 757.

—S 92—Applicability—Public or charitable trust

—S 92—Applicability—Suit by new trustee against ex trustee—Sanction—Necessity

A suit by a plaintiff claiming to be a newly appointed trustee of a temple for recovery of movable properties and cash of the temple and for an account of trust

A I R 1939 Mad 694=(1939) 1 M L J 517

—S 92—Applicability—Test—Prayer in plaint as on date of institution—If deciding factor—Amendment

MAHANT NARSIDASJI v BAI JAMNA

41 Bom L R 787=A I R 1939 Bom 354

breach of private trust—Consent of Advocate-General—If necessary—Breach of trust—Meaning of

C. P. CODE (1908) S 92

By a deed of wakf, a Mahomedan lady created a primary trust for the benefit of the poor members of her family, and subject thereto, a secondary trust for certain charitable or religious objects, and appointed the defendant as the sole trustee of the wakf property. The plaintiffs, who were relatives of the settlor, pleading their interest as members of her family, instituted a suit for the removal of the defendant alleging breaches of the primary trust.

Held, that the word 'trust' in the context 'breach of trust' in S. 92, C.P. Code denoted the abstract obligation to administer property in a certain defined way which attached to a trustee in whom property was vested upon trust, that by 'breach of trust' was meant a breach by the trustee of the confidence or duty that the law or equity imposed on him in the particular respect complained of in the case that, therefore as the allegations of the plaint were made by the plaintiffs only as objects of the primary or non public purpose and as there was no allegation of a breach of the secondary trust which was of a public nature, the case did not fall within S. 92 (1), C.P. Code, and the consent of the Advocate-General was not necessary to the institution of the suit (*Prasad, J.*) 1 E. 4800; G. H. S. 4800

1939 Rang L.E. 140=184 L.C. 413=
12 E.R. 142=A.I.R. 1939 Rang 254

—S 92—Charitable trust—What constitutes.

Where the words used in a trust are "charitable and benevolent" purposes, any object to be effected must possess both characteristics. According to the law, will constitute a good charitable trust, charitable trust of a public character. words are "public, benevolent or charitable." If the gift is expressed in another form, admission non-charitable object violence only, or trust will fail.

its very terms show that those purposes are of a private nature, and the gift would not fall within S. 92.

members of his own family who are poor this is not a public purpose of a charitable nature" within the

education generally is not a private trust, but a public trust governed by the provisions of S. 92, C.P. Code. A scheme of loans for educational purposes at low interest must be regarded as a scheme of a charitable

C. P. CODE (1908), S. 95,

a deviation from the trust can only be made in proceedings taken with the sanction of the Advocate General under S. 92, C. P. Code, and not by way of an originating summons under O. 45 of the Original Side Rules of the High Court. (*Leach, C.J. and Patanjali Sastri, J.*) EDWARD H. M. BOWER v. HESTERLOW,

50 L.W. 534=1939 M.W.N. 1015=

A.I.R. 1939 Mad. 920=(1939) 2 M.L.J. 714.

—S 92—Scheme Decree—Construction—Provision regarding election of trustee and his qualification—Scheme empowering trustee, worshippers or voters of temple to apply to Court for directions—Worshippers—Right of, to apply to Court for determination whether person nominated for election as trustee was eligible—Court's power to determine question

A Justice framed a scheme for the management of a temple and provided for the election of trustee whenever a vacancy occurred. A clause in the scheme stated the qualifications of trustee for being eligible to election and provided that nominations should be delivered to the remaining trustee on a certain date. Another clause in the scheme empowered any trustee, worshippers or registered voters of the temple to apply to the High Court for such further directions as might be necessary for carrying out the scheme. A vacancy having occurred, the nomination for the office of trusteeship of a certain person was received by the remaining trustee. There upon worshippers and voters of the temple applied to the High Court for directions.

to determine the question and direct the trustee election was

ask for the relief prayed for in the plaint and it need not be specified in the decree. The relief asked for was

(*mana Rao, J.*) GOVINDASWAMI NAIDU v. NARAYANA SWAMI CHETTY.

1939 M.W.N. 1009=

A.I.R. 1939 Mad. 605.

Scheme decree—Court making appointment—If acts as "Court" or persona designata

extended to such a case. (*Burn, J.*) LAKSHMANA PILLAI v. GOVINDAM PILLAI 50 L.W. 460= 1939 M.W.N. 915=A.I.R. 1939 Mad. 969= (1939) 2 M.L.J. 475.

Compensation for Onus—Duty of

C P CODE (1908), S 95

It is incumbent on an applicant under S 95, C P. Code, for compensation for wrongful attachment, to prove affirmatively that the attachment was applied for on insufficient grounds. It is not sufficient for this purpose to show that he has properties which are greater in value than the amount at stake in the suit. He must show that the plaintiff was unjustified in

Wrongful attachment—Claim to compensation—Proof of special damage—If essential

In an application for compensation for wrongful attachment under S 95 C P Code, it is not necessary to prove special damage. The words 'expense or injury' indicate that either the particular damage upon which a monetary value can obviously be placed or the more general damage which the Court endeavours to assess in terms of money is contemplated by the section. It is not necessary to prove more than general damage e.g., mental pain, general loss of reputation etc. (*Wadsworth J*) **PALANISAMI GOUNDAR v KALIAPPA GOUNDAR** 1939 M W N 1084 = 50 L W 640

S 95—Order of attachment passed but attachment not effected—Compensation if can be allowed

Compensation will be granted only where damage has resulted. Where only an order of attachment before judgment has been passed but the property has not been actually attached in pursuance of the order, it cannot be

C P CODE (1908), S 100

pleadings—Order on—If 'decree'—Appealability. See C P CODE, SS 2 (2) AND 96. 50 L W 541
—S 96—'Decree'—Execution—Order refusing to direct value of property to be stated in sale proclamation—Appealability. See C P CODE, S 47.

41 Bom L R 328
—S 96—'Decree'—Order by City Civil Judge

—S 98 (3)—Content decree—Meaning of—Right of appeal in cases decided by Court on procedure not warranted by the Code. See PRACTICE—APPEAL

1939 P W N 151

S 100

Adverse possession—Finding
Construction of documents
Custom—Finding
Discretion of trial Court
Evidence
Finding of fact
New case
New plea
Question of fact

of title—Meaning of word

The question as to which of the two alternative

100—Construction of documents—Mere pieces—Inference—Challenging in second appeal
10 Court only considers various documents as

in second appeal (*Asyogi J*) **RAJLU NAIDU v MALAK** I L R (1939) Nag 680 =

1939 N L J 297 = A I R 1939 Nag 197

—S 100—Construction of document—When question of law

A decision as to how much area was the subject matter of a settlement of a town at the time of its settlement which is arrived at on the construction of a Rubkari is a question of law so far as the question of construction of Rubkari is concerned (*Wort and Agarwal, JJ*) **RAM RAMBIJAYA PRASAD SINGH v KRISHNA MADHO** 182 I C 982 = 5 B R 864 = 12 B P 89 = 20 P L T 677 = A I R 1939 Pat 364

wrongful attachment—Absolute and non setting aside of order of claim to compensation

The setting aside of an order of essential preliminary to the grant wrongful attachment under S 95 C P Code. Nor would the passing of an absolute order of attach

S 96—Applicability—Sust for account S 33 of the U P Agriculturists Relief Act—

he United by a Civil Court r United the right P Code
of appeal in *DURGA CHARAN v MAKKANDE* 181 I C 282 = 11 B A 558 = MISIR 1939 A W E (H C) 105 = 1939 R D 71 = A I R 1939 All 233

—S 96—Decree—Application after preliminary decree in partition suit raising matters not raised in

C. P. CODE (1908), S. 100

—S 100—Custom—Finding as to existence—When open to interference.

Where a question as to the existence of a custom has been decided by a lower Court, what has to be seen is not merely whether the decision arrived at is one of fact but whether in arriving at it, the Court has committed an error in law or not, for instance if it was based upon the acceptance of evidence which was inadmissible, it could be questioned in second appeal but if it was so based because the Judge believed the evidence of some and disbelieved that of the others, it could not be questioned in second appeal (*Hamilton, J.*) RAM

—S. 100—Custom—Finding as to proof of—High Court, if and when can interfere in second

The finding of lower Court that a custom has been proved, is a finding on a mixed question of fact and law. The High Court sometimes sets aside such a finding on the ground that the evidence is so considerable in favour of the existence of the custom that the lower Court should have found the custom proved. But if it is in accordance with the weight of evidence, it would be impossible to reverse it in second appeal. (*Bennet and Verma, JJ.*) PAUHAN BISHU NATH JATI v. RAMLAGAN JATI 183 IC 471 = 12 E.A. 143 = 1939 E.D. 234 = 1939 A.W.R. (H.C.) 313 = 1939 A.L.J. 617 = A.I.R. 1939 All. 500.

—S 100—Discretion—Exercise of, by Trial Courts—Power of High Court in appeal.

The discretion given to the trying Court is not to be exercised arbitrarily but with due regard to the facts of the case and general principles of justice. High Court in second appeal has power to see which of the two Courts exercised discretion properly in accordance with the judicial principles. (*Niyogi, J.*) BALIRAM v.

—S 100—Finding of fact—Dismissal of appeal under O. 41, R. 11, C. P. Code—Finding of fact recorded in judgment consisting only of a few lines—If conclusive—Interference.

A finding of fact of the lower appellate Court is conclusive in second appeal and the mere fact that the judgment of the lower appellate Court consists only of a few lines does not make the finding of fact any the less binding. There is nothing in the Code of Civil Procedure to take out of this rule a case in which the appellate Court records a finding of fact on an appeal under O. 41, R. 11. High Court will not interfere in the case of error of law or of defect in procedure. (*Chatterji, JJ.*) BAIJOO LALL

C. P. CODE (1908), S. 100.

RAJENDRA NATH BHATTACHARIYA.

179 IC 803 = 5 B.R. 295 = 11 R.P. 405 = A.I.R. 1939 Pat. 267.

—S 100—Finding of fact—Finality—Finding that land had been rendered unfit for tenancy.

Where a tenant builds coolie huts on the land and the lower Court comes to the conclusion that by reason of such construction the land has been rendered unfit for the purpose of tenancy and that there has been a breach of S. 22 of Chota Nagpur Tenancy Act, the finding is one with which the High Court is not entitled in second appeal to interfere. (*Wort, Ag C J and Manohar Lal, JJ.*) RAMJAP DUBE v. JAGADISH CHANDRA DEO DHABAL. 178 IC 274 = 5 B.R. 78 = A.I.R. 1939 Pat. 161.

—S 100—Finding of fact—Finding as to document being tampered with

A finding that a document has been tampered with is a finding of fact and is not a finding of law. It is not a finding of fact which the High Court in second appeal can interfere with. (*Das, J.*) DAS

—S. 100—Finding of fact—Finding that certain

Lall, JJ.) KISHORI LALL v. PIARE LALL. 41 P.L.R. 462.

—S 100—Finding of fact—Finding that account book is one kept in regular course of business

A finding that a book of account is one kept in the regular course of business is a finding of fact.

—S. 100—Finding of fact—Finding that lands were totally unfit for cultivation—Interference in second appeal.

The question whether lands were totally unfit for cultivation is a question of fact.

—S 100—Finding of fact—Interference.

Finding of fact based on misapprehension as regards real point at issue cannot be upheld in second appeal. (*Bhida, J.*) CO OPERATIVE SOCIETY DINGRAWALI v. MUHAMMAD DIN. A.I.R. 1939 Lah. 301.

—S. 100—Finding of fact—Interference—Error of law—What is

A finding of fact can be reversed in second appeal when it is vitiated by some error of law. A finding of fact is not a finding of law.

C P CODE (1908), S 100

sider all the important evidence, it must correctly state what the witnesses said and what the documents contain. There is a difference between interpretation of a document and giving a meaning to it which cannot possibly be given in view of the contents of the documents, for the interpretation must be a meaning which the document can bear although of course it need not be the meaning which the Court of second appeal would give to it. To find against a party because he has not produced before the Court 'some material' which he was not within his power to produce, prove nothing is obviously an error as to the evidence of a witness on the ground that he has made a statement which he has in fact not made is also a mistake of law (*Zia ul Hasan and Hamilton, JJ*) DUKHARAN NATH v. COMMERCIAL CREDIT CORPORATION, LTD. 184 IC 521 = 1939 OLR 630 = 12 RO 125 = 1939 OWN 1114

—S 100—Finding of fact—Interference—Failure to consider documentary evidence

Where the lower appellate Court has failed to consider a certain document which had been relied upon by the trial judge its finding of fact is not binding in second appeal (*Skemp J*) DEBI SINGH v. SIS RAM 41 PLE 120 AIR 1939 Lah 188

—S 100—Finding of fact—Interference—Finding based on conjectures

Finding of fact by lower Appellate Court based partly on conjectures and partly on a misunderstanding of the evidence is liable to be set aside in second appeal (*Bhidi, J*) GHULAM HUSSAIN v. SECRETARY OF STATE AIR 1939 Lah 510

—S 100—Finding of fact—Interference—Lower appellate Court differing from trial Court without good reason

Where a lower appellate Court without giving very

C P CODE (1908), S 100

have a great responsibility and should be especially careful in such cases. If they are not, it may be a matter for administrative discipline but a second Appellate Court cannot put the matter right in second appeal (*Stone C J and Bose J*) MADHODAS GULABDAS v. APPAJI RAOJI ILR (1939) Nag 510 = 183 IC 492 = 12 RN 71 = 1939 N LJ 329 = AIR 1939 Nag 221

—Ss 100 and 101—Findings of fact—Respondent

Ss 100 and 101
a respondent

challenging the correctness of the findings of fact of the first appellate Court which in spite of such findings dismissed the appeal (*Mysa hu and Sharpe, JJ*) MA LON v. MA MYA MAY 179 IO 946 = 11 ER 363 = AIR 1939 Rang 59

—S 100—New case—Estoppel—Not set up in written statement and no issue—If can be raised in second appeal

Where no case of estoppel was set up in the written statement and no issue was framed on the point it is too late to set up such a new case in second appeal as there could be no findings of fact on which any estoppel could be based (*Bonet and Verma JJ*) ANJUMAN ISLAMIA v. RADHEY LAL 180 IC 621 = 11 RA 485 = 1939 AWR (HC) 141 = 1938 ALJ 1238 = AIR 1939 All 194

—S 100—New plea—Plea that anonymous comment is not admissible under S 90 of the Evidence Act without proof as to its writer—If open in second appeal See EVIDENCE ACT S 90 (1939) 2 MLJ 593

—S 100—New plea—Point not one of pure question of law (viz) failure of justice is caused—If can be raised in second appeal for the first time

The question whether there has been a failure of

—S 100—Finding of fact—Interference—Lower Court omitting to consider all available evidence

A finding of fact to be binding on a Court of second appeal must be a judicial decision reached on a consideration of the whole of the evidence and where it appears that all the available evidence has not been considered, the High Court will interfere and interfere in second appeal (*Skemp J*) G RAM v. KAJU RAM AIR 1939 La

—S 100—Finding of fact—Interference—

1938 AWR (HC) 873 = AIR 1939 All 163

—S 100—New plea—Point not raised in written statement or anywhere—Maintainability in second appeal

A point not taken anywhere, not even in the written

—S 100—New plea—Question of law—If can be

second appeal even if it comes to a contrary conclusion (*JJ*) RANJIT SINGH v. NA 41 PLE 82

—S 100—Finding of

fact

No second appeal has any the only ground is that the lower Appellate Court has omitted to mention this or that piece of evidence. The Legislature rightly or wrongly has decided that the first Appellate Court is to be trusted and it behoves first Appellate Judges to bear in mind the fact that their findings of fact are conclusive and that they therefore

—S 100—Question of fact—Amalgamation of several holdings of lands into single holding—Question as to—Finding on—Conclusive character of

The question whether several holdings of land have been amalgamated so as to create a single holding in respect of which a single suit can be instituted for rent

C P CODE (1908) S 100

fact (*Harries, C J and Rowland J*) **SIDHAKAMAL RAMANUJ DAS v BATAKRISHNA MAHAPATRA**
18 Pat 204-183 I C 428=5 B E 935=
12 P R 150=5 C L T 10=1939 P W N 37
A I R 1939 Pat 402

—S 100—Question of law—Wall erected by co-owner on top of joint wall, if joint wall

Where one of the owners of a joint wall erects a wall on the top of the joint wall, the question whether the

67=

A I R 1939 Pat 28

—S 100—Second appeal—Finding of absence of reasonable and probable cause in suit for malicious

of malice in a suit for
(*Manohar Lal J*)
NARAIN

A I R 1939 Pat 13

—S 102—Applicability—Order in execution under S 47—Second appeal by surety for judgment debtor—Bar of

S 102 C P Code, not only applies to appeals but to orders in execution under S 47, C P Code. The section applies also to second appeals from orders in execution under S 47. Since a surety for a judgment-debtor is for the purposes of appeal deemed a party within the meaning of S 47, by reason of S 145 C P Code, the bar of appeal under S 102 would also apply to a surety for a judgment debtor (*Davis, J C and Tyabji J*) **KHANCHAND v PESSUMAL**

I L R (1939) Kar 342=A I R 1939 Sind 360

—S 102—Suit of small cause nature—Inamdar—Suit to recover dues from khatedar—Second appeal

Sums payable by a khatedar to an inamdar as a superior holder are 'dues', and a suit to recover such

41 Bom L R 1174

—S 102—Suit of small cause nature—Suit by landlord for recovery of price of trees cut and misappropriated by defendant tenant—Second appeal

Where in a suit for recovery of the price of certain trees said to have been cut from the land of the plaintiff

Court of small causes to try the suit is not barred and a second appeal to the High Court from such suit is

C P CODE (1908) S 105

(*Davis, J C and Mehta, J*) **LARKANA MUNICIPALITY v GOKALDAS**
I L R (1939) Kar 131=
179 I C 927=11 R S 165=A I R 1939 Sind 35

—S 103 and O 41 R 25—Scope of O 41, R 25—Remand for further evidence—Finding—High Court if can interfere

Order 41, R 25 refers primarily to first appeals though the rule so far as possible can be applied to second appeals. The rule as it stands allows reference only to the Court from whose decree the appeal is preferred, which in the case of second appeals would be the lower appellate Court. Therefore, it does not follow in the case of second appeals that a finding from a first Court is to be treated on the same footing as a finding from an appellate Court. Where an issue has not been determined by the first appellate Court and in second

on remand to the trial
found to be insufficient
ding such evidence and

issue returns the case to the
cannot be said to have been
r appellate Court. Therefore

High Court has jurisdiction to determine such issue of fact under S 103 (*Gruer and Pollock J J*) **BRIJ MOHAN v CHANDRA CHAGABAI**

182 I C 12=11 R N 502=1939 N L J 315=
A I R 1939 Nag 173

—S 104—Private reference to arbitration—Agreement subsequently filed in Court—Court finding award of majority to be bad and refusing to make it decree of Court—Appeal

Certain persons made a private reference to arbitration. Subsequently they made an application to the Court under para 17 (1) of Sch II, C P Code that the agreement to refer to arbitration should be filed in Court. That application was dismissed but on appeal the agreement was ordered to be filed in Court. There were three arbitrators. Two of them made one award and the third made a different award. The Court found that the award of majority was bad

—S 104(c)—Scope of appeal under—Objection to award on the ground that arbitrator had no jurisdiction to allow amendment of plaint previously refused by Court—If open

An appeal under S 104(c) C P Code from an order modifying an award on arbitration under para 12 of Sch II, C P Code, the scope of which is appeal can attack the award as it modifies the points which have a bearing on the award. Though it is open to the appellant to show that the award could not be modified, he has no right to appeal against the award.

C P CODE (1908) S 109

Court on the ground that there was no 'case' decided within the meaning of S 115, C P Code on a consideration of the facts of the case it was held that it was not a fit case in which leave to appeal to the Privy Council against the order of dismissal should be granted (*Iqbal Ahmad and Ismail J.J.*) GOVIND D.

H₁ ..

182 I C 1007 = 1939 O A 568 - 12 R O 15 =
1939 A W R (C C) 92

—S 109 (c)—Scope—Appl
2 and O 15 R 3 for disposa
preliminary issues—Reflection—Revision petition to the
High Court—Dismissal—Leave to appeal to Privy

under S 109 (c) of the Code of Civil Procedure
(*Harries, C J and Rowland J.*) NANDAMANI v
HARIKRISHNA

181 I C 644 = 5 B R 646 =
11 E P 624 = 1939 P W N 341 =
A I R 1939 Pat 564

—S 109 (c)—Scope—Fo
public temple—Disputes bet
—If of public and private
to be granted

The form of ritual in an important public temple in the country is a matter of both public and private importance falling within S 109 (c) C P Code, and when the case relates to religious rites and ceremonies at a temple of national importance and raises disputes between two religious sects of a community regarding the conduct and form of worship at the temple the questions at issue are in themselves of great public importance so as to justify the grant of a certificate under S 109 (c) permitting an appeal to His Majesty in Council (*Leach C J and Patanjali Sastri J.*) THIRUVENGADA RAMANUJA PEDDA JIVANGARLU v VENKATACHARLU

1939 M W N 816 =
50 L W 252 = A I R 1939 Mad 847 =
(1939) 2 M L J 378

—S 110—Affirming decree—High Court on
appeal increasing amount of compensation in land
acquisition matter—If affirming decree

Where on appeal the High Court increased the amount of compensation awarded by the lower Court in a land acquisition matter, the High Court has only affirmed the decree of the lower Court and has not varied it and as such unless a substantial question of law is involved leave to appeal to the Privy Council could not

C P CODE (1908) S 110

be granted (*Bennet and Verma J.J.*) SRI NARAIN
KHANNA v SECRETARY OF STATE

1939 A L J 736 = 1939 A W R (H C) 651 =
A I R 1939 All 723

—S 110—Leave to appeal—Affirming judgment on
merits—Judges of High Court differing on question of

rt agree on
below, but
mere aca
ground be
Council (*Wart*,
NDRA NARAIN

= 11 E P 225
law—Purchase
years in lieu of
part consideration for sale—Interest on Zarpesbgi in

—S 110—Valuation—Computation of—Mortgage
debt—Andol—Valuation of mortgage affirmed but rate

—S 110—Valuation—Construction of agreement
embodied in compromise decree—Dispute as to—Decis
sion affecting party's interest in property worth over
Rs 10,000—Right to grant of certificate

value than Rs 10,000 that party is entitled to a certifi
cate under the second clause of S 110, C P Code
permitting an appeal to His Majesty in Council
(*Leach C J and Somayya, J.*) GURUVAPPA
NAICKER v MOUNAGURUSWAMI NAICKER
I L R (1939) Mad 838 = 1939 M W N 607 =
49 L W 786 = A I R 1939 Mad 742 =
(1939) 2 M L J 36(2)

—S 110—Valuation given in plaint—If can be
enhanced by plaintiff applicant

Where the plaintiff applies for leave to appeal to the
Privy Council, it is not open to him to allege that the
valuation given by him in his own plaint was too low
and ask for its enhancement for the purposes of S 110
C P Code (*Bennet and Verma, J.J.*) SRI KRISHNA
MOHAN v PURSHOTTAM DAS

1939 A W R (H C) 648 = 1939 A L J 751 =
A I R 1939 All 695

—S 110—Valuation—Rent suit—Decision allow
ing abatement of rent for diminished area

If the decision in a suit for rent goes to the root of
the contractual relation between the parties and deter
mines the rights and liabilities of the parties on the
basis of the lease for all time to come, the real value of

C. P. CODE (1908), S. 110.

the subject matter of the suit could be taken to be beyond its apparent value. But this principle has no application where what the Court decides in substance is that there was failure on the part of the landlord to put the tenant in possession of some part of the demised land, and for the period in suit, he is entitled to reduced rent corresponding to the area in actual possession of the tenant. In such a case, the sum of money actually at stake in the suit would represent its true value (*S. A. Ghose and Mukherjee, JJ.*) **RAM LAL DUTTA - DHIRENDRA NATH ROY** 43 C.W.N. 239

—S. 110, para (2)—'Property'—Meaning of—*Suit by some of heirs for maintenance allowances—Other heirs, though parties, not making claim—Plaintiffs, if can rely on value of entire allowances payable to all heirs*

The word 'property' in the second paragraph of S. 110 C. P. Code, must be taken to be the property of the applicants and it is the extent to which the decree has operated to the prejudice of the applicants that determines the value of the property for the purpose of the section. In a suit by some of the heirs of a certain person for maintenance allowances, the plaintiffs are entitled to rely only upon the value of their own share and not upon the value of the entire monthly allowances payable to all the heirs, when the other heirs, though made parties, have not made any claim. In such circumstances, it cannot be said that the decision in the suit will involve directly or indirectly the interests of others who have made no claim (*S. A. Ghose and Mukherjee, JJ.*) **SAYEDULLA v. K. HABIBULLA** 43 C.W.N. 239

—S. 112—Scope of discretion of
CODE, SS 109 AND 112—RIGHT OF AP
1939 A.W.E. (P.C.) 76—A.I.E. 1
(1939) 2 M.L.J. 151 (P.C.)

—S. 115.
Appealable order not appealed against
Award.
Burden of proof
Case decided.
Commission
Court.
Court fee
Discretion
Error of law
Illegality or material irregularity
Interlocutory Order.
Jurisdiction
Leave to sue as a pauper
Material irregularity
Other remedy open
Powers of High Court
Revision.
Scope
Subordinate Court

—S. 115—Appealable order not appealed against—
Revision—Interference.

C. P. CODE (1908), S. 115.

Court. (*Hamilton and Bennet, JJ.*) **BAIJNATH v. CHANDIKA PRASAD** 1939 O.W.N. 751=
183 I.C. 837=12 B.O. 80 (1)=1939 O.L.R. 575=
1939 O.A. 639=1939 A.W.R. (C.C.) 108.
—S. 115 and Sch II, Para 15—Award—Setting aside award and superseding arbitration—Revision if lies

An order passed under Sch II Para 15, C. P. Code, in a pending suit setting aside an award and superseding the arbitration, is not open to revision under S. 115, C. P. Code. The powers of the High Court are discretionary and in view of the fact that the order can be challenged in the appeal from the decree it would lead to unnecessary prolongation of the proceedings in the trial Court if a revision is entertained and so should be avoided (*Hamilton and Srivastava, JJ.*) **NABI**

—S. 115—Burden of proof—Mistake as to—
Revision.

A mistake as to onus of proof gives rise to a revision petition (*Dalit Singh, J.*) **SHIB LAL v. MST. GOPANDI** 41 P.L.R. 513=A.I.R. 1939 Lah 562

—S. 115—'Case decided'—Arbitration—Award—
Order setting aside—Revision

Whether an order does or does not decide a case within the meaning of Sec 115, C. P. Code, must be considered in each case. An order of the Court setting aside

does not decide a case
(*Davis, J.C. Lobo and TAKHITRAM*.)

1939 C. 724=12 R.S. 75=
A.I.R. 1939 Sind 241 (F.B.)

—S. 115—"Case decided"—Lower Court assuming jurisdiction not vested in it and threatening to interfere with vested rights of subject—Revision—High Court's powers of interference.

A "case decided" within the meaning of 115, C. P. Code, might fall within the category of orders passed in the assumption of jurisdiction not vested in the Court by law. Where an invasion of vested rights of the subject is threatened by a Court assuming a jurisdiction which it does not possess, and it is about to resort to the use of the machinery at its disposal, the High Court will, as a superior Court, exercise its powers under S. 115, C. P. Code, and will not restrict its jurisdiction (*Wassooden, J.*) **BABURAO v. HARIHARRAO**

183 I.C. 556=12 R.B. 113=41 Bom.L.R. 490=
A.I.R. 1939 Bom. 279.

—S. 115—"Case decided"—Order by Judge reviewing decision of predecessor in exercise of inherent powers—Revision—Interference by High Court.

Both O. 47 and S. 151 are to be construed strictly, and are not intended to be used, and are not to be used,

appeal on orders of jurisdiction with his order passed by his one of the defendants without jurisdiction,

against such order is not strictly maintainable, such an appeal, treated as revision application, is competent. The order sought to be set aside is not an interlocutory order so as to bar an application in revision, inasmuch

—S. 115 and Sch II, Para 15—Award—Order setting aside—Revision, if lies.

The proceedings for arbitration in the course of a pending suit are of an interlocutory character and part of the suit itself and hence an order setting aside an award filed by an arbitrator is not revisable by the High

Y.D. 1939—14

O P CODE (1908) S 115

as it sets aside an order which is not an interlocutory

—S 115—Case decided—
suit under S 10 C P Code—

No application in revision will
a Judge under S 10 refusing to
directing a suit to proceed. Suit
decided within the meaning
(*Davis J C and Tyabji J*)

RANCHAND VIRMAL v
LILARAM A I R 1939 Sind 291

—S 115—Commission—Refusal to issue—Inter
locutory order—Interference

An interlocutory order is subject to revision. An
order refusing to issue without sufficient reason a com-
mission for the further cross examination of a witness
partly cross examined and who happened to live more
than 200 miles away, is also subject to revision the
ground being that much harm may accrue to a party
from such a refusal (*Davis J C S*) JAMNA DHAR
POTDAR AND CO v GULAB CHAND

1938 A M L J 123
—S 115—Court—Collector's order under
S 20 A Madras Estate Land Act—Revision—Jurisdiction
to interfere See MADRAS ESTATES LAND ACT
S 20-A 50 L W 162=(1939) 2 M L J 292

—S 115—Court—Judge of F
Cause Court—Order in election dispute
Ss 16 and 17 of Karachi City Municipal
—Powers of High Court to interfere
CITY MUNICIPAL ACT SS 16 AND 17

I L R (19
—S 115—Court fee—Order det

other order which may be without jurisdiction (*Burn
J*) MANAITHUNAINATHA DESIKAR v GOPALA
CHETTIAR 49 L W 270=
1939 M L W N 205=A I R 1939 Mad 380=
(1939) 1 M L J 317

—S 115—Court fee—Question of classification of
suit—Decision adverse to plaintiff—Interference—
Jurisdiction of High Court

The High Court has jurisdiction to interfere in revision
with the decision of the lower Court on the question
of the classification of the suit for purposes of court fee
where such decision has been adverse to the plaintiff
(*James and Rowland, J J*) SITAL PRASAD SAH v
RAMDAS SAH 18 Pat 267=5 B R 893=
183 I C 281=12 E P 122=1939 P W N 197=
A I R 1939 F

—S 115—Discretion—Interference—Prerogative
In matters of judicial discretion the revision
will not interfere unless there are either no
whatever for its exercise or unless its exercise
manifestly unfair result (*Norman, J C S*) ANAR
CHAND v BHOLA NATH 1939 A M L J 17

—S 115—Discretion—Order allowing amend-
ment of plaint—Revision

No revision lies against an order allowing an amend-
ment of the plaint (*Tik Chand J*) ISMAIL v
RULIA RAM 41 P L R 146

O P CODE (1908), S. 115

—S 115—Discretion—Order that advocate could
appear on behalf of party by reason of his interest
party—Interference in revision

a Judge orders that an advocate could not
nety appear on behalf of a party by reason of
f his having been interested on behalf of the
in matters which were collateral to the suit in
d heat upon the ground of ample

ment' as defined in S 2 (9) of the Code and therefore
the powers of the Court are restricted as laid down in
S 85 Government of Burma Act and the question
cannot be agitated in addition as one of general super-
intendence over the Courts as provided in S 85 (1) of
that Act (*Roberts C J Mya Bu and Mostly J J*)
TAJENDRA CHANDRA DHAR v TAJENDRA LAL
GHOSH 1939 Rang L R 514=182 I C 77=

11 E R 512=A I R 1939 Rang 183 (S B)

—S 115—Discretion of Court Order accepting
security—Interference

Accepting or refusing to accept security furnished by
a person appointed as a guardian of property of a
minor is a matter within the discretion of the Court
Where the Court in exercise of its discretion has accept-
ed the security and it is not shown that the Court has
acted with material irregularity in the exercise of its

fusion
bring a case within the
and misinterpretation of
of and for maintaining an
115 (*Leach C J*) and
JETTIAH v MEYVAPPAN
SERVAI 50 L W 159=1939 M W N 700=
A I R 1939 Mad 740=(1939) 2 M L J 353

—S 115—Error of law—Order on question of
res judicata

The question whether the decision of a lower appel-
late Court that a suit was barred by *res judicata*, was
correct cannot be raised in revision (*Tik Chand, J*)
MT HASAN JAW v QAMAR UD DIN
180 I C 126 (1)=41 P L R 176=
A I R 1939 Lah 48

—S 115—Error of law—When ground for
revision

Where a Judge has refused to consider the objec-
tion to sale in the erroneous belief that it was not
the jurisdiction of the Court to set aside the sale

the petition
the petition
SALWAN
P L R 553=
A I R 1939 Lah 222

—S 115—Illegality or material irregularity—
Framing of issues—Jurisdiction—Wrong decision as to
framing of burden of proof—Interference by High
Court

It is by law the duty of the trial Court to frame
issues in a suit It is not any part of the legitimate

C. P. CODE (1908), S. 115

duties of the High Court to help lower Courts to frame issues. They alone have jurisdiction to frame the issues in the suits which come before them for trial, and they have jurisdiction to decide wrongly as well as rightly. The fact that a wrong decision is made is never a ground for interference in revision under S. 115 (*Enn, J*) **NANICKAVACHAKAM CHETTIAR v OFFICIAL RECEIVER, EAST TANJORE**

1939 M.W.N. 608 = 50 L.W. 459 =
A.I.R. 1939 Mad. 733 = (1939) 2 M.L.J. 44

—S. 115—*Illegally and with material irregularity—Allowing plea cutting at root of plaint but not raised in pleadings and deciding same without amendment of pleading or raising relevant issue—Revision—Interference*

A Court acts improperly when, without directing an amendment of the pleadings or revising the relevant issues, it allows a question to be argued before it which cuts at the very root of the plaintiff's suit, but which is not raised in the pleadings at all and decides it, in doing so it ignores some of the most material provisions of the C.P. Code. The High Court in such a case will interfere under S. 115, C.P. Code (*Davis, J.C. and Weston, J*) **MIR HAJI GHULAM SHAH v KHAN CHAND** I.L.R. (1939) Kar. 330 = 182 I.C. 154 = 11 R.S. 250 = A.I.R. 1939 Sind. 137

—S. 115—*Illegally or with material irregularity—Court having jurisdiction to decide but deciding wrongly—If ground for revision by High Court*

If a Court has jurisdiction to decide a matter, it does not at all follow that if it has decided an issue wrongly it has acted illegally or with material irregularity in the exercise of its jurisdiction so as to call for interference under S. 115, C.P. Code (*Harries, C.J.*)

J.) NANDAMANILU HARIKRISHNA
181 I.C. 644 = 11 E.P. 62 =
1939 P.W.N. 341 = A.I.R.

—S. 115—*Illegally or with material irregularity—Refusal to decide some issue as preliminary—Revision—Interference*

A Court does not go illegally or with material irregularity when it refuses to decide some issue as preliminary to the trial of a suit, but decides the issues which are properly before it and gives judgment on the merits of the case (*Davis, J.*) **SHAH v. SINDH** 137.

—S. 115—*Interlocutory order—Interference* See C.P. CODE, S. 115—*COMMISSION—REFUSAL TO ISSUE*. 1938 A.M.L.J. 123

—S. 115—*Interlocutory order—Interference in revision—Revision High Court.*

The expression "case which has been decided" in

C. P. CODE (1908), S. 115.

BIR BAL DASS v. CANTONMENT BOARD, LAHORE

41 P.L.R. 55.
—S. 115—*Interlocutory order—Rejection of evidence by trial Court—Revision.*

When a Court rejects evidence which is material on a point which is not a preliminary question, it does

irreparable damage to a party, but that cannot be said in the case of rejection of evidence. It is open to the party to question the decision in appeal which is the proper time at which the error, if any, should be remedied (*Mya Bu and Moseley, J.J.*) **RAM OUDH v GOVERNMENT OF BURMA**, 1939 Rang. L.R. 591 = A.I.R. 1939 Rang. 448.

—S. 115—*Jurisdiction—Absence—Interference—Duty of High Court even if no miscarriage of justice results—Deposit beyond time—Acceptance by Court—Effect*

Where a Court acts without jurisdiction e.g., when it receives a deposit made by a party beyond the time fixed in a case where time is of the essence of the contract or compromise in pursuance of which it is made, the High Court must interfere in revision, though no real miscarriage of justice has occurred, because the acceptance of the deposit is clearly an act without jurisdiction (*Harries, C.J.*) **BISWAMBHER SAHU v HARI NAIK** 5 C.L.T. 29

—S. 115—*Jurisdiction—Absence of Judge sitting and order passed by his predecessor by way of revision—Revision—Interference*

Ordinarily, the Court of the Judicial Commissioner will not interfere in revision when a remedy will lie by

Where a Court makes an order which it has no jurisdiction to make, the order is revisable by the Court in revision. (*Wort, J.*) **MIR SYED HUSAIN v. RASOOL SINGH**. 5 B.R. 704 = 181 I.C. 895 = 11 R.P. 647 = A.I.R. 1939 Pat. 518.

—S. 115—*Jurisdiction—Failure to exercise—*

interfered against such an order. (*Abdul Rashid, J.*)

A.I.R. 1939 Pat. 21

C P CODE (1908), S 115

—S 115—*Jurisdiction—Failure to exercise—Wrong view of law—Interference*

Where the lower legal position and by to exercise its proper interfere in revision

RACHUR

1939 P W N 50 E.

—S 115—*Ju*

Order erroneously

Land Acquisition Act as incompetent

An order of a District Judge rejecting a reference made under S 18 of the Land Acquisition Act in the erroneous view that the party at whose instance the reference was made was not entitled to demand a reference is open to revision under S 115 C P Code (*Mukherjee and Roxburgh JJ*) COMILLA ELECTRIC SUPPLY LTD v EAST BENGAL BANK LTD

43 C W N 973=I L R (1939) 2 Cal 401=

A I R 1939 Cal 669

—S 115—*Leave to sue as a pauper—Refusal—Revision*

In the case of an application for leave to sue as a pauper a Court has jurisdiction either to allow or disallow it and when once it has exercised its jurisdiction and decided whether rightly or wrongly there can be no revision under S 115 C P Code (*Zia ul Hasan and H*)

—S 115—*Material irregularity*

erty there has been misunderstanding as regards the legal position and the Courts commit serious mistakes in ignoring many important factors in connection with the property put up for sale, and are largely carried away by the fact that there is no substantial injury but where the various material irregularities in fact cause substantial injuries the irregularities must be deemed to have resulted in miscarriage of justice and High Court can in such case interfere by way of revision (*Ahmad J*) HUNDHELKHAND CYCLE AND MOTOR AGENCY v PEOPLES BANK OF NORTHERN INDIA LTD

181 I C 542=11 R Pesh 70=

A I R 1939 Pesh 9

—S 115—*Material irregularity—Grant of temporary injunction under O 39 R 1—Revision—Interference* See C P CODE O 39 R 1

1939 M W N 621

—S 115—*Material irregularity—Misreading evidence*

If the lower Court misreads and failing to take notice of therein comes to an erroneous decision deemed to have acted with material decision is open to revision (*Mackay J*) DWARIKA v B-

A

—S 115—*Material irregularity—Addition of new party and allowing question on new issue added—Revision*

In a suit brought on a mortgage executed by a father his son was added as a defendant along with the father. After the son was added as was framed whether the mortgaged self acquired property of the father joint family. The trial Court howe-

C P CODE (1908), S 115

question put on behalf of the defence whether the mortgaged property was the self acquired property of the

A I R 1939 Pat 74

—S 115—*Material irregularity—Throwing burden of proof on wrong party in disregard of statute—Revision—Interference with order framing issues*

Where a statute specifically puts the burden of proof upon a certain party the Court in placing the burden of proof the other way is acting with material irregularity in the exercise of its jurisdiction, and the High Court may in a proper case interfere in revision to set right an issue framed in such a manner as to disregard the statutory provision regarding burden of proof. To disregard the direction of the statute with regard to burden of proof is a perverse decision and conscious departure from the rule of procedure (*Mockett, J*) VARISAI MUHAMMAD KOWTHER v. MARUNGAPURI ESTATE 1939 M W N 395=

A I R 1939 Mad 644=(1939) 1 M L J 334

any such thing it is also a material to hold an item proved which the trial eld not proved without stating on what appellate Court relies for the proof of the item (*Dalip Singh J*) ABBAS TEA COMPANY v ISHAR DAS 41 P L R 492=A I R 1939 Lab 470

—S 115—*Other remedy open—Appeal competent—Revision—Interference—When justified*

Though the High Court will not ordinarily interfere in revision when a remedy lies by way of appeal the High Court will interfere if a defect of law and a grave wrong are manifest, for the High Court will not permit a case to proceed on jurisdiction snatched and having no basis or justification (*Davis J C and Weston, J*) MIR HAJI GHULAM SHAH v KHANCHAND

I L R (1939) Kar 330=182 I C 154=

11 E S 250=A I R 1939 Sind 137

—S 115—*Other remedy open—Appeal—Conditional decree in pre-emption suit—Subsequent order dismissing suit for default—Revision*

A decree passed in a suit for pre-emption in favour of the plaintiff for possession of the land in dispute on pay-

—S 115—*Other remedy open—Interference in revision*

Where a petitioner in revision has another remedy facts of each particular case court will interfere in revision (*J*) PARYAG v CHAND- 79 I O 845=11 R P 416=

C. P. CODE (1908), S. 115.

1939 P.W.N. 50 = 5 B.R. 304 =
A.I.R. 1939 Pat. 263

—S. 115—Other remedy open—Interference in revision—Practice.

There is no inflexible rule that the High Court will not interfere in revision when other remedy is open by way of suit. High Court even in such cases can interfere in revision to avoid multiplicity of litigation and hardship to the parties (*Tek Chand J.*) MT BHAGWANTI v. SANT SINGH 182 IC 560 = 12 R.L. 58 = 41 P.L.R. 374 = A.I.R. 1939 Lah. 62

—S. 115—Other remedy open—Order on claim petition—Power of High Court to revise if precluded by right of suit under O. 21, R. 63 See C. P. CODE, O. 21, R.R. 58, 60 AND 63 AND S. 115

1938 A.L.J. 1118 = A.I.R. 1939 All. 117

—S. 115—Other remedy open—Order dismissing suit under O. 9, R. 8—Revision

No revision lies against an order dismissing a suit under O. 9, R. 8, C. P. Code, as another remedy is open to the plaintiff by way of an application for restoration of the suit with an appeal against the order, if that application is dismissed (*Eletcher, J.*) MAHOMED SHAH v. SHIB DIAL SINGH. 41 P.L.R. 102

—S. 115—Power of High Court—Execution sale—Absence of application to set aside along with deposit of decretal amount—Refusal to set aside—Interference in revision—Power of High Court—Hardship—If ground of interference.

The High Court has no power under Code, to interfere with an order of a Judge to set aside an execution sale application to set aside the same the amount of the decree and compensation have been deposited in time. The fact that it is a hard case does not permit the High Court to interfere where it has no power so to do. (*Harrier, C.J. and Rowland, J.*) BHARI JENA v. GAURANGA CHARAN SAHU. 18 Pat. 210

—S. 115—Powers of High Court—Execution sale—Order confirm—Order rejecting—Interference See C.

—S. 115—Powers of High Court—Order of Sessions Judge in revision from order of Magistrate under Bombay Municipal Boroughs Act—Revision to High Court—Interference—Grounds.

The High Court has power to revise from an order passed in revision against an order of a Magistrate under Bombay Municipal Boroughs Act. Such an order should be rare. When the

MANUFACTURING AND CALICO PRINTING CO., LTD.
41 Bom.L.R. 1015 = A.I.R. 1939 Bom. 478

—S. 115—Powers of High Court—Perverse order—Interference in revision

The High Court will not ordinarily exercise its revisional powers even though the lower Court has decided a question of fact or law erroneously, but its hands are not tied when it finds that the order of the Court below is entirely and absolutely unjustifiable and is almost perverse (*Wort, J.*) DEOKI SINGH v. RAGHUVINDRA BHAGWAN. 183 IC 371 = 5 B.R. 922 = 12 R.P. 135 = 1939 P.W.N. 229 = A.I.R. 1939 Pat. 430

C. P. CODE (1908), S. 115

—S. 115—Revision—Grounds—New point not raised in Court below—If open as ground of interference

It is not the practice of the High Court to interfere in revision on a point which has never been taken in the Court below (*Broomfield, J.*) SHRIPAD BAJI v. DAITATRAYA VITHAL. 183 IC 753 = 12 R.B. 128 = 41 Bom.L.R. 485 = A.I.R. 1939 Bom. 296.

—S. 115—Revision—Interference—Finding on un rebutted oral evidence.

Where a lower Court had come to the conclusion that a person is an agriculturist on the oral evidence of a plaintiff which was not rebutted on the other side by any evidence, the chief Court held that in the circumstances there was no reason to interfere with the findings of the lower Court (*Zia ul Hasan, J.*) GOVAIL DAS v. PUITU LAL. 1939 O.A. 425

—S. 115—Scope—Appeal expressly prohibited by law—Power to treat appeal as revision application—Question of law or construction of document or wrong decision—If sufficient ground

S. 115 C. P. Code, was only intended to relate to questions of jurisdiction and not to questions of law or construction of document, or a wrong decision by a Judge. These are not matters affecting jurisdiction and cannot constitute sufficient grounds for treating an appeal as an application in revision when an appeal is expressly prohibited by law. S. 115 is intended only matters on which the parties with a and Tyabji, J.)

1939 Sind 360

—S. 115—Scope—Order amending decree under Ss. 151 and 152—Revision—Maintainability. See C. P. CODE, S. 2 (2.) 41 Bom.L.R. 800.

—S. 115—Scope—Order filing award and directing decree to be drawn up after overruling objection on ground of want of leave under O. 32, R. 7, C. P. Code—

the award, dismissing an application to set aside the award under Sch. II, para 15, its order is revisable by the High Court under S. 115 C. P. Code, provided it is shown that the Court below has exercised a jurisdiction

S. 115—"Subordinate Court"—Chief Judge of Small Causes Court deciding appeal under S. 217 of the City of Bombay Municipal Act—If Court subordinate to High Court—Revision—Competency

The Chief Judge of the Bombay Small Causes Court acting under S. 217 of the City of Bombay Municipal Act acts as a *persona designata*, and not as a Court hearing an appeal, and hence an application for revision under S. 115 C. P. Code, against his decision is not competent (*Macklin and Lokur, JJ.*) MULJI SICKA & CO. v. MUNICIPAL COMMISSIONER OF BOMBAY. 41 Bom.L.R. 984 = A.I.R. 1939 Bom. 471.

—S. 115—Subordinate Court—District Judge acting under R. 62 (1) of Burma Municipal Rules—

C P CODE (1908), S 151

payment of deficit Court fees and gives a further extension of time under S 149 C P Code

C. P CODE (1908), S 151

the decree. The

A I R 1939 Bom 389

—Appeal

No appeal lies from an order passed under S 151 C P Code (*Tek Chand and Abdul Rashid JJ*)
GANESH DATTA v MODEL TOWN SOCIETY

A I R 1939 Lah 508

—S 151—Appeal—Amendment of decree to correct description of property—Power of Court—Refusal to amend—Appealability *See* C P CODE S 47 41 Bom LR 1170

—S 151—Appeal—Application under O 21 R 90—Order restoring possession to judgment debtor pending its decision—Appeal—Revision

An appeal was filed against an order rejecting as incompetent an application filed by the judgment debtor under O 21 R 90 C P Code. In the meantime the sale was confirmed and the auction purchaser took possession. The Appellate Court allowed the appeal and

The lower
of the pro-
151 C P

—S 151
Amendment
(second application for)

Appeal
Compromise decree
Consent decree
Execution sale
Inherent powers
Jurisdiction
Limitation
Restitution
Restoration
Scope
Stay of execution
Stay of suit

—Ss 151 152 163 and Evid Act S 94—
Amendment—Application to amend mistake in

114 and 153
and 153
reimburse

and final decrees with reference to the extent of the interest mortgaged, namely, from five pies to five

Held (1) that the order was really in the nature of an interlocutory order and was not in any sense a decree within the meaning of S 2 (2) C P Code as the eventual rights of the parties would depend upon the result

181 IC 153—11 RA 552—
1939 A W R (H C) 173—1939 A L J 193—
A I R 1939 All 231

—Ss 151 and 152—Amendment of decree—Question of costs raised in both first and second appeals—Dismissal of appeals—Effect of—Amendment of first appellate decree relating to costs—If competent

Where the question of costs was raised by the applicant for an amendment of the decree in both the first and second appeals which were dismissed the matter must be presumed to have been adjudicated adversely to him. In such circumstance application by him for amendment of the decree

—S 151—Appeal—Order amending final decree under S 151—Right of appeal—Proper procedure—Appeal from amended decree—Competency

The nature of an order is not determined by the provision of law to which it may wrongly have been assigned. The true test is what is the order itself. A Court cannot change its true order merely because it is given a wrong name. Where a Court amends a final decree passed by it purporting to do so under S 151, C P Code it cannot be said that no appeal lies in the matter on the ground that

—Ss 151 and 152—Amendment—Maintainability

It is not open to a Court to entertain an application for amendment of a decree on the same question has been decided in *J) SAHU RAM v LAKHMI DASS* 12 B L 103—41 P L R 136—A I R

—Ss 151 and 152—Amendment of decree—Application for amendment of decree can be allowed

A decree should not be amended after the powers conferred under Ss 151 and 152 are exhausted long after it was passed so as to prejudice the rights of third parties if

the right of appeal is not exhausted there are express provisions for the maintainability of an

C. P. CODE (1908), S. 151.

appeal, it would not be correct to say that because an appeal is allowed by statute in certain cases it must be allowed by way of analogy in other similar cases. Where

—S. 151—*Applicability*—*Appeal dismissed for failure of appellant to file appellant's list or make printing deposit in time*—*Restoration*—*Application for*—*Inherent power of Court to entertain*—*If application for review under O. 47, R. 1—O. 41, R. 19—Application for Patna High Court Rules, Part II, Chap. IX, R. 23.*

An application for the restoration of an appeal dismissed for failure to file the appellant's list cannot be treated as an application for review. Under O. 47, 1, C. P. Code, the new matter or evidence should have been discovered by the party applying for review and not by the Court whose order is to be reviewed, and secondly the error or mistake referred to in the rule should be one apparent on the face of the record and not one caused by the Court not being apprised at the time of the dismissal of the appeal of the circumstances which prevented the appellant from taking the necessary steps. A failure to file the appellant's list cannot be treated as being an omission of the same kind or description as an omission to produce a matter or evidence subsequently discovered or a mistake or error apparent on the face of the record. Nor would O. 41, R. 19, C. P. Code, apply to such an application for restoration of an appeal dismissed under R. 23 of Ch IX, Part II of the rules framed by the Patna High Court for failure to file the appellant's list. The failure to file the list stands on no worse footing than the default referred to in Rr 11, 17 and 18 of O. 41; and although there is no provision in the Code covering the case of restoration of an appeal dismissed for failure to file the list or to deposit the printing cost, the Court is not powerless to restore the appeal. If the Court has power to dismiss an appeal for such failure, it also has the power to restore the appeal in a proper case. S.

—S. 151—*(for fraud, not for compromise)*

—S. 151—*Inherent jurisdiction*

The remedy of decree on the ground that his consent was induced by and as to institute a regular suit for the purpose.

51

C. P. CODE (1908), S. 151.

the suit itself and the same kind of investigation is necessary as in a contested suit. Further it cannot be said that there was any fraud practised upon the Court which would entitle the Court to set aside the order. (Muk. SEN)

—S. 151—*Execution sale—Power to set aside before confirmation*

No doubt the Court has inherent power under S. 151, C. P. Code, to set aside an execution sale before its confirmation, where there is an abuse of the process of the Court. But there is certainly no jurisdiction to set aside the sale under that section on the application of a third party on the ground that owing to a misapprehension due to the conduct of another third party he failed to be present on the day of the sale and therefore was unable to bid. It might be otherwise if that had been due to some omission or wrong procedure on the

S. 151, C. P. Code, should be applied with great caution and only when the ends of justice require its application. In order to decide whether the ends of justice require the application of the section to a particular case, the Court has to keep in view not only the interest of the applicant but also that of the other party who may be affected by the order sought to be made under the section. (*Harriet, C. J. Fazl Ali and Agarwala, JJ.*) *KAM KHEIAWAN SINGH v. MONI-LAL SAHU.* 20 Pat L T 883—1939 P W N 832—A I R 1939 Pat. 678 (F.B.).

—S. 151—*Inherent powers—Review—Power of Subordinate Judge to review order of predecessor—O. 47 and S. 151—Construction.*

S. 151, C. P. Code, is not intended to constitute one subordinate Judge an appellate authority over his predecessor of like jurisdiction as himself. If one Judge reviews the order of another, he cannot escape the provisions of O. 47, C. P. Code, by placing his order under S. 151. Both S. 151 and O. 47 are to be construed strictly and are not intended to be used to allow one Judge to sit in appeal on orders of his predecessor and exercise jurisdiction with his own. (*Davies, J.*) *MIR HAJI GHULAM SHAH v.*

I L R (1939) Kar 330—

1 B S 250—A I R, 1938 Sind 137.

jurisdiction—Absence of—Order of reviewing predecessor's order on

application for restoration of appeal dismissed for default—Powers. See C. P. CODE, O. 41 R. 19 AND S. 151. 1000 & 11 L J. 124.

—Appeal or an appeal the inherent he in such

O P CODE (1908) S 115

as it sets aside an order which is not an interlocutory

11 R S 250 = A I R 1939 Sind 137

—S 115—*Case decided—Order refusing to stay suit under S 10 C P Code—Revision—Competency*

No application in revision will a Judge under S 10 refusing to direct a suit to proceed. Suit decided within the meaning (Davis J C and Tyabin J)

LILARAM A I R 1939 Sind 291

—S 115—*Commission—Refusal to issue—Interlocutory order—Interference*

An interlocutory order is subject to revision. An order refusing to issue without sufficient reason a commission for the further cross examination of a witness partly cross examined and who happened to live more than 200 miles away, is also subject to revision the ground being that much harm may accrue to a party from such a refusal (Davis J C S) JAMNA DHAR POTDAR AND CO v GULAB CHAND

1938 A M L J 123

—S 115—Court—Collector's order under S 20 A Madras Estates Land Act to interfere See MADRAS A S 20-A 50 L W 162=

—S 115—Court—Judicial Cause Court—Order in election Ss 16 and 17 of Karachi City Mu

—Powers of High Court to interfere See KARACHI CITY MUNICIPAL ACT SS 16 AND 17

ILR (1939) Kar 131

—S 115—Court fee—Order determining and holding plaint to be insufficiently stamped—Revision

An order of a trial Court determining the proper

C P CODE (1908), S. 115

—S 115—*Discretion—Order that advocate could*

of his interest
ate could not
by reason of
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other side in matters which were collateral to the suit in question and there was upon the record proof of ample material before him upon which he could make such an t whether he was de then it is not

mittedly a judge and therefore

the powers of the Court are restricted as laid down in S 85 Government of Burma Act and the question cannot be agitated in addition as one of general superintendence over the Courts as provided in S 85 (1) of that Act (Roberts C J Mya Bu and Mealy J J) TAJENDRA CHANDRA DHAR v TAJENDRA LAL GHOSH

1939 Rang L R 514 = 182 I C 77
11 R R 512 = A I R 1939 Rang 183 (S B)

—S 115—*Discretion of Court—Order accepting security—Interference*

Accepting or refusing to accept security furnished by a person appointed as a guardian of property of a minor is a matter within the discretion of the Court

—S 115—*Error of law*

Mere commission of error of law by the lower Court

J) MANAITHUNAINATHA DESIKAN v GOPALA CHETTIAR 49 L W 270 =

1939 M L W N 205 = A I R 1939 Mad 380 = (1939) 1 M L J 317

—S 115—*Court fee—Question of classification of suit—Decision adverse to plaintiff—Interference—Jurisdiction of High Court*

The High Court has jurisdiction to interfere in revision with the decision of the lower Court on the question of the classification of the suit for purposes of court fee where such decision has been adverse to the plaintiff (James and Knowland, J J) SITAL PRASAD SAH v KAMDESA SAH 18 Pat 267 = 5 B E 893 =

183 I C 281 = 12 E P 122 = 1939 P W N 197 = A I R 1939 Pat 274

—S 115—*Discretion—Interference—Principles*

In matters of judicial discretion the revising Court will not interfere unless there are either no grounds whatever for its exercise or unless its exercise produces manifestly unfair result (Norman J C S) AMAR CHAND v BHOLA NATH 1939 A M L J 17

—S 115—*Discretion—Order allowing amendment of plaint—Revision*

No revision lies against an order allowing an amendment of the plaint (Tek Chand, J) ISMAIL v RULIA RAM 41 P L R 146

SERVAI 50 L W 159 = 193 J M W N 100 = A I R 1939 Mad 710 = (1939) 2 M L J 253

—S 115—*Error of law—Order on question of res judicata*

The question whether the decision of a lower appellate Court that a suit was barred by res judicata, was correct cannot be raised in revision (Tek Chand J) MT HASAN JAN v QAMAR UD DIN

180 I C 126 (1) = 41 P L R 176 = A I R 1939 Lah 48

—S 115—*Error of law—When ground for revision*

Where a Judge has refused to consider the objection to sale in the erroneous belief that it was not entertainable in view of Proviso 2 to O 21 R 90 C P Code the error of law in such case affects the jurisdiction of the Court and in the circumstances the petition for revision is competent (Bhude J) SATWAN SINGH v MAN SINGH 41 P L R 553 =

A I R 1939 Lah 222

—S 115—*Illegality of material irregularity—Framing of issues—Jurisdiction—Wrong decision as to placing of burden of proof—Interference by High Court*

It is by law the duty of the trial Court to frame issues in a suit. It is not any part of the legitimate

C. P. CODE (1908), S. 115

dates of the High Court to help lower Courts to frame issues. They alone have jurisdiction to frame the issues in the suits which come before them for trial, and they have jurisdiction to decide wrongly as well as rightly. The fact that a wrong decision is made is

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—S 115—*Illegally and with material irregularity—Allowing plea cutting at root of plaint but not raised in pleadings and deciding same without amendment of pleading or raising relevant issues—Revision—Interference.*

A Court acts improperly when, without directing an amendment of the pleadings or revising the relevant issues, it allows a question to be argued before it which cuts at the very root of the plaintiff's suit, but which is not raised in the pleadings at all and decides it, in doing so it ignores some of the most material provisions of the C. P. Code. The High Court in such a case will interfere under S. 115, C. P. Code (*Dattis, J C and Weston, J*) *MIR HAJI GHULAM SHAH v KHAN CHAND* I L.R. (1939) Kar 330=182 I.C. 154=11 E.S. 250=A.I.R. 1939 Sind 137

—S 115—*Illegally or with material irregularity—Court having jurisdiction to decide but deciding wrongly—If grounds for revision by High Court.*

If a Court has jurisdiction to decide a matter, it does not at all follow that if it has decided an issue wrongly it has acted illegally or with material irregularity in the exercise of its jurisdiction so as to call for interference

—S 115—*Illegally or with material irregularity—Refusal to decide some issue at preliminary issues in suit—Revision—Interference.*

—S 115—*Interlocutory order—Interference. See C. P. CODE, S. 115—COMMISSION—REFUSAL TO ISSUE* 1938 A.M.L.J. 123

—S 115—*Interlocutory order—Interference in revision—Rangoon High Court.*

The expression "case which has been decided" in S. 115 is wide enough to include an interlocutory order, and even though there may be an appeal from the final

C. P. CODE (1908), S. 115.

BIR BAL DASS v. CANTONMENT BOARD, LAHORE
41 P.L.R. 55

—S 115—*Interlocutory order—Rejection of evidence by trial Court—Revision.*

The High Court will not entertain an application on the ground that evidence is being, or will be, rejected by the trial Court. No doubt an interlocutory order may decide a case and may be subject to revision if it does irreparable damage to a party, but that cannot be said in the case of rejection of evidence. It is open to the party to question the decision in appeal which is the proper time at which the error, if any, should be remedied (*Mya Bu and Mostley, J.J.*) *RAM OUDH v. GOVERNMENT OF BURMA*, 1939 Rang.L.R. 591=A.I.R. 1939 Rang 448.

—S 115—*Jurisdiction—Absence—Interference—Duty of High Court even if no miscarriage of justice results—Deposit beyond time—Acceptance by Court—Effect.*

Where a Court acts without jurisdiction, e.g., when it receives a deposit made by a party beyond the time fixed in a case where time is of the essence of the contract or compromise in pursuance of which it is made, the High Court must interfere in revision, though no real miscarriage of justice has occurred, because the acceptance of the deposit is clearly an act without jurisdiction, (*Harris, C.J.*) *BISWANABHER SAHU v. HARI NAIK* 5 C.L.T. 29.

—S. 115—*Jurisdiction—Absence of Judge sitting and order passed by his predecessor by way of review—Revision—Interference.*

Ordinarily, the Court of the Judicial Commissioner will not interfere in revision when a remedy will lie by way of appeal, but where one Judge sits in appeal on the order of his predecessor and usurps a power which is the duty of the other Judge, it is the duty of the High Court not to permit the case to be snatched, which has no basis or justification in law, and, it should set aside the order in revision as being one without jurisdiction. The Court has also power to set aside, in the revision, an order made by the predecessor when the one Judge deciding a case usurps a power which is the duty of the other Judge, where the order is set aside and the case is referred to the other Judge (*Dattis, J.*) *SHAH v. KHAN* 182 I.C. 154=11 E.S. 250=A.I.R. 1939 Sind 137.

Where a Court makes an order which it has no jurisdiction to make, the order is revisable by the Court in revision. (*Wort, J.*) *MIR SYED HUSAIN v. RASOOL SINGH*, 5 B.R. 704=181 I.C. 896=11 R.P. 647=A.I.R. 1939 Pat. 518.

—S 115—*Jurisdiction—Failure to exercise—Material irregularity—Lower appellate Court not dealing with points raised—Revision.*

The High Court will interfere in revision when the lower appellate Court fails to deal with the points raised in the appeal.

MAHESHWARI PRASHAD BHAGAT v. MAHADAY ROY, 182 I.C. 708=5 B.R. 814=12 R.P. 67=A.I.R. 1939 Pat. 216.

An order staying further proceedings in a suit is an interlocutory order, and no revision petition can be preferred against such an order. (*Abdul Rashid, J.*)

C. P. CODE (1908), S 115

—S 115 — Jurisdiction — Failure to exercise — Wrong view of law — Interference

Where the lower Court has exercised its jurisdiction in a legal position and by to exercise its proper interference in revision

RACHUR 179 I C 845 = 11 R P 416 = 1939 P W N 50 = 5 B R 304 = A I R 1939 Pat 263

—S 115— Jurisdiction—Refusal to exercise— Order erroneously rejecting reference under S 18 of Land Acquisition Act as incompetent

An order of a District Judge rejecting a reference made under S 18 of the Land Acquisition Act in the erroneous view that the party at whose instance the reference was made was not entitled to demand a reference is open to revision under S 115 C P Code (*Mukherjee and Roxburgh JJ*) COMILLA ELECTRIC SUPPLY LTD v EAST BENGAL BANK LTD

43 C W N 973 = I L R (1939) 2 Cal 401 = A I R 1939 Cal 689

—S 115—Leave to sue as a pauper—Refusal—Revision

In the case of an application for leave to sue as a pauper a Court has jurisdiction either to allow or disallow it and when once it has exercised its jurisdiction and decided whether rightly or wrongly there can be no revision under S 115 C P Code (*Zia ul Hasan and Hamilton, JJ*) BADRI NATH v RAMCHANDRA 14 Luck 442 = 179 I C 1001 = 1939 O A 231 = 11 R O 219 = 1939 O L R 110 = 1939 O W N 193 = A I R 1939 Oudh 129

—S 115—Material irregularity—Execution sale—Court committing mistakes which result in substantial injury—Interference

Where in execution proceedings for the sale of property there has been misunderstanding as regards the legal position and the Courts commit serious mistakes in ignoring many important factors in connection with the property put up for sale, and are largely carried away by the fact that there is no substantial injury but where the various material irregularities in fact cause substantial injuries the irregularities must be deemed to have resulted in miscarriage of justice and High Court can in such case interfere by way of revision (*Air Ahmad J*) BUNDHELKHAND CYCLE AND AGENCY v PEOPLES BANK OF NORTHERN LTD 181 I C 542 = 11 E P C A I R 1939

—S 115—Material irregularity—Grant of temporary injunction under O 39 R 1—Revision—Interference See C P CODE O 39 R 1 1939 M W N 621

—S 115—Material irregularity—Misreading evidence

If the lower Court has failed to read the evidence therein, comes to a decision to have (Macneay, J)

A I R 1939 Bang 413 —S 115—Material irregularity—Suit on mortgage—Addition of new party and new issue—Order disallowing question on new issue and striking off party added—Revision

In a suit brought on a mortgage executed by a father his son was added as a defendant along with the father. After the son was added as a defendant it was framed whether the mortgaged property was self acquired property of the father or joint family. The trial Court however

C P CODE (1908), S 115

question put on behalf of the defence whether the mortgaged property was the self acquired property of the father or joint family

in disallowing the question and further, striking off the party, and hence his order was reversible under S 115 (*Charle, J*) DURGA DUTT JHA v ASHARIFILAL MAHTHA 180 I C 203 = 5 B E 362 = 11 R P 475 = A I R 1939 Pat 74

—S 115—Material irregularity—Throwing burden of proof on wrong party in disregard of statute—Revision—Interference with order framing issues

Where a statute specifically puts the burden of proof upon a certain party the Court in placing the burden of proof the other way is acting with material irregularity in the exercise of its jurisdiction and the High Court may in a proper case interfere in revision to set right an issue framed in such a manner as to disregard the statutory provision regarding burden of proof. To disregard the direction of the statute with regard to burden of proof is a perverse decision and conscious departure from the rule of procedure (*Mockett J*) VARISAI MUHAMMAD KOWTHAR v. MARUNGAPURI ESTATE 1939 M W N 395 = A I R 1939 Mad 644 = (1939) 1 M L J 334

—S 115—Material irregularity—What is

It is a material irregularity in the exercise of jurisdiction if the Court holds that the defendant has admitted a certain claim of the plaintiff when the defendant has not done any such thing it is also a material irregularity to hold an item proved which the trial Court has held not proved without stating on what evidence the appellate Court relies for the proof of the item (*Dalip Singh J*) ABBAS TEA COMPANY v ISHAR DAS 41 P L R 492 = A I R 1939 Lah 470.

—S 115—Other remedy open—Appeal competent—Revision—Interference—When justified

Though the High Court will not ordinarily interfere in revision when a remedy lies by way of appeal the High Court will interfere if a defect of law and a grave wrong are manifest, for the High Court will not permit a party to be aggrieved by a decision of a lower Court and having no other remedy open

HAND 182 I C 154 = 11 E P C A I R 1939 Sind 137

—S 115—Other remedy open—Appeal—Conditional decree in pre-emption suit—Subsequent order dismissing suit for default—Revision

A decree passed in a suit for pre-emption in favour of the plaintiff for possession of the land in dispute on pay

a decree against which an appeal could be preferred. Consequently a revision is competent against the subsequent order (*Tek Chand J*) SHER SINGH v DURGA DAS 41 P L R 381 = A I R 1939 Lah 376

—S 115—Other remedy open—Interference in revision

Where a petitioner in revision has another remedy open by way of appeal, the High Court will not interfere in revision in each particular case (*Varisai Muhammad Kowthar J*) SHER SINGH v DURGA DAS 41 P L R 381 = A I R 1939 Lah 376

C P. CODE (1908), S. 115.

1939 P.W.N. 50=5 B.R. 304=
A.I.R. 1939 Pat. 263—S. 115—Other remedy open—Interference in
revision—Practice.There is no inflexible rule that the High Court will
not interfere in revision when other remedy is open by—S. 115—Other remedy open—Order on claim
petition—Power of High Court to revise if precluded by
right of suit under O 21, R. 63. See C P. CODE,
O 21, RR. 58, 60 AND 63 AND S. 115
1938 A.L.J. 1118=A.I.R. 1939 All. 117—S. 115—Other remedy—Order dismissing suit
under O 9, R. 8—RevisionNo revision lies against an order dismissing a suit
under O 9, R. 8, C P. Code, as another remedy is open
to the plaintiff by way of an application for restoration
of the suit with an appeal against the order, if that
application is dismissed (Blecher, J.) MAHOMED
SHAH : SHIB DIAL SINGH 41 P.L.R. 102—S. 115—Power of High Court—Execution sale—
Absence of application to set aside along with deposit of
decretal amount—Refusal to set aside—Interference in
revision—Power of High Court—Hardship—If ground
of interferenceThe High Court has no power or
Code, to interfere with an order of a
ing to set aside an execution sale
application to set aside the same though the sum amount
of the decree and compensation have been deposited in
time. The fact that it is a hard case does not permit
the High Court to interfere where it has no power so to
do. (Harris, C.J. and Rowland, J.) BHARI JENA
v. GAURANGA CHAPIN SINGH 18 Pat. 910—S. 115—Power
sale—Order confirm
set aside though de
Order rejecting ap
Interference See C—S. 115—Powers of High C
Sessions Judge in revision from order
under Bombay Municipal Boroughs
High Court—Interference—GroundsThe High Court has power to
revision from an order passed
revision against an order of a
Bombay Municipal Boroughs Act,
ence should be rare. When the
one of construction of a General Act and is of consider-
able importance to Municipalities and rate payers, the
High Court will interfere (Beaumont, C.J.) BOROUGH
MUNICIPALITY OF AHMEDABAD v. AHMEDABAD
MANUFACTURING AND CALICO PRINTING CO. LTD.
41 Bom.L.R. 1015=A.I.R. 1939 Bom. 478—S. 115—Powers of High Court—Perverse order
—Interference in revision.The High Court will not ordinarily exercise its
revisional powers even though the lower Court has
decided a question of fact or law erroneously; but its
hands are not tied when it finds that the order of the
Court below is entirely and absolutely unjustifiable and
is almost perverse. (Wart, J.) DEOKI SINGH v.
RAGHUVINDRA BHAGWAN. 183 I.O. 371=
5 B.B. 922=12 R.P. 135=1939 P.W.N. 223=
A.I.R. 1939 Pat. 430.

C. P. CODE (1908), S. 115

—S. 115—Revision—Grounds—New point not
raised in Court below—If open as ground of interfer-
ence.It is not the practice of the High Court to interfere
in revision on a point which has never been taken in
the Court below (Broomfield, J.) SHRIPAD RAJI v.
DATTATRAYA VITHAL. 183 I.O. 753=12 R.B. 128=
41 Bom.L.R. 485=A.I.R. 1939 Bom. 296.—S. 115—Revision—Interference—Finding on
unrebutted oral evidenceWhere a lower Court had come to the conclusion that
a person is an agriculturist on the oral evidence of a
plaintiff which was not rebutted on the other side by any
evidence, the chief Court held that in the circumstances
there was no reason to interfere with the findings of the
lower Court (Zia ul Hasan, J.) GOPAL DAS v.
PUTTU LAL 1939 O.A. 425—S. 115—Scope—Appeal expressly prohibited by
law—Power to treat appeal as revision application—
Question of law or construction of document or wrong
decision—If sufficient groundS. 115 C. P. Code, was only intended to relate to
questions of jurisdiction and not to questions of law or
construction of document, or a wrong decision by a
Judge. These are not matters affecting jurisdiction and
cannot constitute sufficient grounds for treating an
appeal as an application in revision when an appeal is
expressly prohibited by law. S. 115 is intended only
matters on which
the parties with a
and Tyagi, J.)

1939 Sind 360.

—S. 115—Scope—Order amending decree under
Ss. 151 and 152—Revision—Maintainability. See C. P.
Code, S. 2 (2). 41 Bom.L.R. 800.

—S. 115—Scope—Order filing award and direct-

set aside the
revisable by
provided it is
jurisdictionDATTATRAYA VITHAL. 183 I.O. 753=12 R.B. 128=
41 Bom.L.R. 485=A.I.R. 1939 Bom. 296.—S. 115—"Subordinate Court"—Chief Judge of
Small Causes Court deciding appeal under S. 217 of
the City of Bombay Municipal Act—If Court subor-
dinate to High Court—Revision—Competency.The Chief Judge of the Bombay Small Causes Court
acting under S. 217 of the City of Bombay Municipal
Act acts as a *persona designata*, and not as a Court
hearing an appeal, and hence an application for revision
under S. 115, C. P. Code, against his decision is not
competent (Blacklin and Lokur, JJ.) MULJI SICKA
& CO v. MUNICIPAL COMMISSIONER OF BOMBAY.
41 Bom.L.R. 984=A.I.R. 1939 Bom. 471.—S. 115—
District Judge
Municipal Rules—
acting under R. 62

C P CODE (1908) S 115

Transfer by him of case without jurisdiction—Interference

No doubt whatever a District Judge does within the exercise of his powers as a *persona designata* cannot be questioned by the High Court in revision but he must not go beyond the limits of these powers as laid down. Where on a petition being filed before him as a *persona designata* under K 62 (1) of the Burma Municipal

with him, for being heard and disposed of, whatever the Additional District Judge does in that behalf, if it were a ministerial action, can only be regarded as nullity and the High Court is entitled to interfere in revision inasmuch as it has before it what is a revision order passed without jurisdiction of the District Judge in a case within 115 C P Code. The absence of the want of power to transfer the case to the District Judge (*Roberts, C J and Mosely J*) HABIB SAHIB v. SHEIK BUDHOO 180 IC 931-11 R.R. 445-A I.R. 1939 Rang 143(S.R.)

—S 115— Subordinate Court—Jud
siding officer of Court exercising function
distinguished from Court itself—If Court”
designata

ing whether the Judge acts as a Court or as a *persona designata*, the important point to be investigated is what is the source of his authority. The nature of the proceedings and the action taken therein may also be relevant and may be considered (*Wassenaar J*)

BABURAO v HARIHARRAO 183 IC 556 =
12 B B 113 = 41 Bom LR 490 =
AIR 1939 Bom 279.

—S 115—Subordinate Court—Revenue Court—
Orders of—If reusable by Chief Court

As no Court of revenue can take jurisdiction to set aside an order passed to the chief Court, in a matter to that Court an order passed is not revisable by the Chief Court. *Zia ul Hasan f.* RIYASAT RAM NAGAR v. SOEMBER SINGH 181 I C 58-1939 O W N 412-1939 R D 258-11 R O, 278-1939

—S 115-
Order under S
in relation to

The High Court has jurisdiction under S 115 C P Code, in a proper case to entertain an application in revision against an order in revision made by the Sessions Judge under S 111 of the Criminal Procedure Code, 1908.

C P CODE (1908), S 144

to it has performed some action, even though while correctly exercising its jurisdiction contrary to the law or in such a manner as to import a material irregularity into the proceedings. The High Court will not necessarily interfere in every case of illegality or irregularity and ordinarily it will make any order as it thinks fit only where the illegality or irregularity is serious or where material injustice has been caused thereby.

GIRDHAR LAL v BISHEN DEI
1938 A M L J 115
d 151—United Provinces Fncum.

Where the parties to a mortgage transaction agree to sell the property only at a public sale, which is held at the County Estates or party Estates, the mortgagor Act and obtains from the Special Judge an order restraining the opposite party from proceeding with his suit at Bombay, he is deemed to be a party to the transaction.

$$(Then\ C\ I\ o\ d\ C_n = M\ o\kern 0.08em d\ r\)\ C_n\ i\ s\ v_{i,j}$$

—S 141—Scope—Execution proceedings—Application by transferee of decree to be brought on record as transferee-decree holder—If proceeding in suit or original proceeding See C P CODE O 26 R 4

—S 144—Appeal—Order not strictly coming under S 144 passed under S 151—If appealable See C P CODE, SS 151 AND 144 49 L W 519 1939 O W N 765

—S 144—Applicability—Sale set aside after con-
firmation—Application by judgment debtor for mesne
profits

S 144 contemplates restitution, where, and in so far as the order of the court is made payable in consequence of that order cannot be made under S 144. (Tek Chand and Abdul Rashid vs MODEL TOWN SOCIETY AIR 1939 Lah 508)

remedy—Refund of costs recovered—Limitation—Suspension—Rule as to

Pending an appeal against the dismissal of a suit for
recovery by
the appellate
directed the

C. P. CODE (1908), S. 144

execution of the sale deed. It was held that the use of the words 'damages, compensation and mesne profits' in S. 144, C. P. Code, indicates that the possession obtained under an erroneous decree subsequently reversed is wrongful possession and hence on a reversal of the decree the judgment debtor would be entitled not only to possession but also to mesne profits during the period he was kept out of possession but that as the suit was for specific performance of a contract to sell which did not by itself create any interest in the property and the decree only entitled the decree holder to the execution of a sale deed, S. 144 had no application. Further, any loss that might have been suffered by the plaintiff owing to the delay caused by the defendant's objections in the matter of the execution of the sale deed, could not be said to be "properly consequential" on the reversal of the decree, it would be a remote and indirect loss which was outside the scope of S. 144, C. P. Code. The remedy of the decree-holder if any was by way of suit and not by way of restitution under S. 144. That as regards the refund of costs recovered, the period during which the objections of the defendants were being agitated should be deducted in computing the period of limitation on the general principles of subtraction of limitation applicable to cases where a party under certain circumstances from taking advantage of his rights (*Harriet and A'*).

BADRUDDIN KHAN v. MAHYAR KHAN.

L.R. (1939) All 103 = 180 I.C. 633 =

11 E.A. 491 = 1939 A.W.R. (H.C.) 87 =

1939 A.L.J. 1100 = 1939 A.L.J. 1100

A second appeal from an order of restitution under S. 144, C. P. Code, is not barred by S. 153, B. T. A. CHANDRA v. PROTIVA NAT.

—S. 144—Award of stay of execution—Decree holder unable to furnish security—Withdrawal of amount deposited—Reversal of decree—Application for restitution—Right to appeal.

The basis of restitution is the loss suffered by the judgment-debtor by reason of the wrongful decree and the orders resulting therefrom. A judgment debtor apprehending steps in execution applied for stay of execution pending his appeal, and stay was ordered on condition of his furnishing security for the decree amount. He found difficulty in furnishing security and instead deposited the full amount of the decree in Court requesting the Court to take security from the decree-holder before permitting him to withdraw the amount from Court. The Court accordingly made such an order, the decree holder was unable or unwilling to furnish security with

C. P. CODE (1908), S. 144.

the judgment debtor of the use of the money, he was entitled to interest on the amount deposited.

—S. 144—Consequential claims—Discretion of Court—Reversal of decree for possession—Restitution—Claims to mesne profits—When to be made—If arises immediately on reversal of decree or only on decree after trial on remand of suit—Considerations for Court.

Ordinarily, upon reversal of a decree for possession, the judgment debtor would be entitled to possession, if claimed. He would also be entitled to mesne profits during the period he was wrongfully kept out of possession. But it cannot always be said upon reversal of the decree unless it gives a clear indication of the fact that the possession taken under the decree is wrongful. S. 144 makes a distinction between restitution which is properly consequential on the variation or reversal of the decree and restitution which is not. Discretion is vested in the Court to make an order for mesne profits which are properly consequential on such variation or reversal. There may be a reversal which does not

the Court remands the suit for the determination of that question afresh or further inquiry, then it would be

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have to be borne in mind in exercising the discretion vested in the Court.

41 Bom L.R. 1201.

—S. 144—Limitation—Application for restitution—If one in execution—Limitation—Starting point. See LIMITATION ACT, ART. 182. 41 Bom L.R. 1201.

—S. 144—Limitation—Suspension—Principles governing. See C. P. CODE, S. 144—APPLICABILITY, 1938 A.L.J. 1189 = A.L.R. 1939 All 46.

—S. 144—Restitution—Right to—Realised—From surety—Refund on reversal, if can be ordered where surety is not a party.

Where the security, furnished by a surety, is not a party.

I could not be a party in the concerned when the property was BAL KISHAN v. J. K. KATL 1938 A.L.J. 1100

—S. 144—Restitution—Right to—Realised—From surety—Refund on reversal, if can be ordered where surety is not a party.

C P CODE (1908) S 144

Restitution in a case not strictly falling within the terms of S 144 C P Code should be made upon the equitable principle underlying S 144 and in exercise of the inherent power of the Court to prevent abuse of its process. A decree passed against a defendant who avide in appeal preferred by him and the case remanded for trial on 23rd November 1931 meantime plaintiff applied for execution of the

Court could grant refund upon the principle of S 144 under its inherent powers

Held, further, that defendant's application was in time as the right to claim refund arose when the fresh decree was passed at the order of appellate Court

Held also, that S 47 also applied

ILR (1939) Nag 492=182 IC 66=
11 RN 497=1939 NLJ 193=
AIR 1939 Nag 101

—S 144—Sale in execution of ex parte decree—Judgment debtor setting it aside by deposit under O 21, R 89—Ex parte decree also afterwards set aside—Judgment debtor's right to refund of compensation deposited for auction purchaser

entitled to a refund of such compensation benefit by way of restitution within S 144 C P Code (*Edgley, J*)
NARAYAN CHANDRA

—B 144—Scope of

S 144 C P Code decree or it may be put in execution a been varied or reversed under S 144 must be reversed or (*Srinivasa, J*)
SINGH

1939 A

—S 144—S

ment to vakil of f Application for re ability—Payment to vakil not certified to Court—If due to restitution

Where money due to a party under a decree is paid to his vakil whose vakalat implies a power to receive money out of Court on his client's behalf that is sufficient to support an application by the opposite party on reversal

C P CODE (1908) S 145

of the decree to apply for restitution against the party to whose vakil the money was paid S 144 of the C P Code is sufficiently wide to cover such a case. The fact that payment to the vakil is not certified to the Court

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custodian of attached goods—on Court's order—Bona fide order—Liability to pay com-

per session

Where after attachment the goods are delivered to a custodian in pursuance of an order of Court for safe custody on his executing bond undertaking to produce the goods in Court when required or to deliver them to judgment debtor if so ordered and binds himself to pay compensation on his failure to discharge the liability

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UKH RAI
GHANASYAMDAS v E F LAWSON 182 IC 865=
12 RC 114=AIR 1939 Cal 316

—S 145 O 21 R 43 and O 21 A (Cal) R 3

—Custodian to whom goods are delivered by attaching officer on Court's order—If a surety

A surety is one who takes upon himself and guarantees the performance of an obligation which rests primarily upon another. His obligation is an accessory one. S 145 has no application unless the person sought to be proceeded against has taken upon himself the liability of another. It cannot be the liability of the decree holder but it

of the Court charged in proceedings. It is have undertaken to. When an officer of the 21, R 43 the attachment obligation on that obligation means that in Court for being the attaching officer

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LAWSON

182 IC 865=12 RC 114=
AIR 1939 Cal 316

—S 145—Liability of surety—Compromise of suit under O 21 R 63—Default in payment undertaken by plaintiff—Execution of decree against him—If open

C. P. CODE (1908), S 145.

Where a suit under O 21, R 63 is compromised and the plaintiff defaults in making the payment undertaken by him, it is certainly open to the decree holder to take out execution against such a plaintiff also; for his position is that he has compromised the suit and not the decree amount.

BAHADUR v.
184 I.C. 815 =
A.I.J. 801 =

A.I.R. 1939 All 517.

—Ss. 145 add 47—Regular suit against surety—If barred.

S. 145 simply enables a party for whose benefit security has been given to enforce the surety bond against the surety by way of execution to the extent to which the surety has rendered himself personally liable, and no more. If an order for or in the course of execution is made against a surety who is within the ambit of S 145, he is at liberty to appeal against that order as though he were a party to the suit within the meaning of S 47, but in other respects he is not deemed to be a party within S 47. Hence S 145 does not bar a regular suit against surety (*Stemp J*) BHAGHAT RAM KHANNA v. MOHAMMAD BAKHSH I L.R. (1939) Lah 470 =

183 I.C. 495 = 12 R.L. 121 = 41 P.L.R. 589 =
A.I.R. 1939 Lah 175

—S 145—Surety for judgment debtor—Judgment debtor given time to pay decree, without surety's consent—Liability of surety

C. P. CODE (1908), S. 149.

SIVASWAMI CHETTIAR v. MARUDAIYA GOUNDAN,
50 L.W. 429 = 1939 M.W.N. 962 =
(1939) 2 M.L.J. 769.

—S 148—Applicability—Final order in judgment—Order that sale would be set aside if money is deposited within certain time—Jurisdiction to extend time.

If on an application by the judgment-debtor for setting aside a sale, an order is passed that if the decretal amount is deposited within a certain time the sale would be set aside and on failure to deposit that sum within the stipulated period, the application would stand dismissed, the Court ceases to have jurisdiction and has no power to grant the judgment-debtor an extension of time to put in the decretal amount, unless he files a properly constituted application for the review of the order. S 148, C P Code, can have no application in a case of this nature in which a final order has been passed in a judgment. The provisions of O. 20, R. 3 would apply (*Edgley, J.*) SVED MAHOMED ASRAF ALI v. NABIJAN BIBI I L.R. (1939) 1 Cal. 468 =
184 I.C. 848 = 43 C.W.N. 417 =
A.I.R. (1939) Cal 581.

—S 149—Applicability—Application for leave to sue in forma pauperis—Refusal—Order for costs of defendant—Prayer for time to pay court fee—Grant

makes no mention of his costs, pleads non-payment of the costs and an issue is framed on the point as to whether the suit is barred by O. 33, R. 18, C. P. Code,

—S 145—Surety—Liability of—If ceases on dismissal of execution application against judgment debtor

There is nothing in S 145, C P Code, or in any

—Dismissal of pauper to pay Court fees—C. P. CODE, O. 33, 43 C.W.N. 688.
for non-payment of setting aside order payment—Validity. review, a Court sets ing a plaint for non-

C P CODE (1908) S 144

Restitution in a case not strictly falling within the terms of S 144 C P Code should be made upon the equitable principle underlying S 144 and in exercise of the inherent power of the Court to prevent abuse of its process. A decree passed against a defendant was set aside in appeal preferred by him and the case was remanded for trial on 23rd November 1931. In the meantime plaintiff applied for execution of the decree and the defendant deposited a certain amount which was subsequently withdrawn by the plaintiff. On remand the Court passed a decree on 25th March, 1933, for an amount less than what defendant had deposited. So on 16th March 1936 defendant applied for refund of so much of the amount as was received by the plaintiff in excess of what was due to him under the fresh decree.

Held that although S 144 did not Court could grant refund upon the principle under its inherent powers.

Held, further that defendant's application as the right to claim refund accrues when the fresh decree was passed after from the order of appellate Court remanded.

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11 B N 401—1939 N L J 100—
AIR 1939 Nag 101

—S 144—Sale in execution of *ex parte* decree—Judgment debtor setting it aside by deposit under O 21, R 89—*Ex parte* decree also afterwards set aside—Judgment debtor's right to refund of compensation deposited for auction purchaser.

If a judgment debtor against whom an *ex parte* decree was passed chooses to set aside the sale held in execution of that decree by making the necessary deposit under O 21, R 82 C P Code and afterward decree also is set aside the judgment debtor is entitled to claim a refund of the amount.

C P CODE (1908), S 145

of the decree to apply for restitution against the party to whose vakil the money was paid. S 144 of the C P Code is sufficiently wide to cover such a case. The fact that payment to the vakil is not certified to the Court will not defeat the application for restitution. (*Burn and Stodart JJ*) HANUMANTHAPPA v GOOLAPPA 179 IC 991—11 R M 646—1939 M W N 736 (2)—48 L W 945—AIR 1939 Mad 176

—S 145—Bond by custodian of attached goods—Undertaking to deliver on Court's order—Bona fide delivery without Court's order—Liability to pay compensation.

Where after attachment the goods are delivered to a custodian in pursuance of an order of Court for safe

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execution proceedings
JJ) GURMUKH RAI
ON 182 IC 865—
AIR 1939 Cal 316

O 21 A (Cal) R 3

—Custodian to whom goods are delivered by attaching officer on Court's order—If a surety.

A surety is one who takes upon himself and guarantees the performance of an obligation which rests primarily upon another. His obligation is an accessory one. S 145 has no application unless the person sought to be proceeded against has taken upon himself the liability of another. It need not be the liability of either the judgment debtor or the decree holder but it may be the liability of an officer of the Court charged with the execution proceedings. It is well established that when an officer of the Court has undertaken to deliver the goods to a custodian, he is liable to the Court for the value of the goods if he fails to deliver them. When an officer of the Court has undertaken to deliver the goods to a custodian, he is liable to the Court for the value of the goods if he fails to deliver them. (*O 21 R 43*)

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AIR 1939 Oudh 273

—S 144—Scope—Money due under decree—Payment to vakil of party—Subsequent Application for restitution against defendant—Payment to vakil not certified to restitution.

Where money due to a party under a decree is paid to his vakil whose vakalat implies a power to receive money out of Court on his client's behalf that is sufficient to support an application by the opposite party on reversal

that of the custodian whose liability under the bond cannot be regarded as an accessory one. In such circumstances S 145 has no application.

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AIR 1939 Cal 316

—S 145—Liability of surety—Compromise of suit under O 21 R 63—Default in payment undertaken by plaintiff—Execution of decree against him—If open

C. P. CODE (1908), S. 145.

Where a suit under O. 21, R. 63 is compromised and the plaintiff defaults in making the payment undertaken by him, it is certainly open to the decree holder to take out execution against such a plaintiff also; for his position is that he has compromised the compromise decree amount.

BAHADUR v. A. I. J. 801 = A. I. R. 1939 All. 517.

Ss. 145 and 47—Regular suit against surety—If barred.

S. 145 simply enables a party for whose benefit security has been given to enforce the surety bond against the surety by way of execution to the extent to which the surety has rendered himself personally liable, and no more. If an order for or in the course of execution is made against a surety he is at liberty to appeal. If the plaintiff and the surety were a party to the suit but in other respects

within S. 47. Hence S. 145 does not bar a regular suit against surety. (*Skemp J.*) BHAGAT RAM KHANNA v. MOHAMMAD BAKHSH. I. L. R. (1939) Lah. 470 = 183 I. C. 495 = 12 E. L. 121 = 41 P. L. R. 589 = A. I. R. 1939 Lah. 175.

S. 145—Surety for judgment debtor—Judgment debtor given time to pay decret, without surety's consent—Liability of surety.

Where a judgment-debtor was, without the consent of the surety, given time after time to pay the decretal amount, the surety cannot be held liable for the decretal amount on the failure of the judgment-debtor to appear on a particular hearing (*Addison and Ram Lall, J.*)

R. 145—Surety—Liability of—If creditor and

dar—Dismissal—Appeal by real owner—Permissibility
A real owner can be allowed under S. 146, C. P. Code, to file an appeal against the dismissal of a suit instituted by his benamidar who has released his right in the property claimed in the suit by a deed which recites that the appellant is the real purchaser of the property. The Court has ample powers under S. 146 to permit the person in whose favour the plaintiff has released his rights in the property to file an appeal. (*Wadsworth, J.*)

Y. D. 1939—15

C. P. CODE (1908), S. 149.

SIVASWAMI CHETTIAR v. MARUDAIYA GOUNDAN.

50 L. W. 429 = 1939 M. W. N. 962 = (1939) 2 M. L. J. 759.

S. 148—Applicability—Final order in judgment—Order that sale would be set aside if money is deposited within certain time—Jurisdiction to extend time

If on an application by the judgment-debtor for setting aside a sale, an order is passed that if the decretal amount is deposited within a certain time the sale would be set aside and on failure to deposit that sum within the stipulated period, the application would stand dismissed, the Court ceases to have jurisdiction and has no power to grant the judgment-debtor an extension of time to put in the decretal amount, unless he files a properly constituted application for the review of the order. S. 148, C. P. Code, can have no application in a case of this nature in which a final order has been

The provisions of O. 20, R. 3, SYED MAHOMED ASRAF, I. L. R. (1939) 1 Cal. 468 = 184 I. C. 848 = 43 C. W. N. 417 = A. I. R. (1939) Cal. 581.

S. 148—Applicability—Periods fixed in O. 45, R. 7 (1), C. P. Code, as applied to Federal Court appeal—Extension of—Power of Court. See LIMITATION ACT, 1939 P. W. N. 807 (F. B.).

S. 149—Applicability—Application for leave to sue in forma pauperis—Refusal—Order for costs of defendant—Prayer for time to pay court fee—Grant of—Payment of Court-fee alone—Sufficiency—Costs ordered to defendant not paid—Effect—Payment at subsequent stage of suit—If validates suit—Dismissal of suit under O. 33, R. 15—If justified.

S. 149 of the C. P. Code cannot empower a Court

later stage of the suit the defendant who till then makes no mention of the costs, stands

S. 149 and O. 33, R. 7—Dismissal of pauper application—Permission granted to pay Court fees—Date of institution of suit. See C. P. CODE, O. 33, R. 7 AND 15. 43 C. W. N. 686.

S. 149—Plaint rejected for non-payment of deficit court-fee—Subsequent order setting aside order of rejection and granting time for payment—Validity. If, without an application for review, a C. P. Code cannot empower a Court to set aside its own previous order rejecting a plaint

C P CODE (1908), S 151

payment of deficit Court fee
 sion of time under S 149 C
 is not a nullity but remains
 it is set aside by a superior
 fings (*Henderson J*) *UDAK JANAIN SAIKA v*
MADHU CHANDRA MAHANTA 69 CLJ 379=
AIR 1939 Cal 722

—S 151

Amendment

(second application for)

Appeal

Compromise decree

Consent decree

Execution sale

Inherent powers

Jurisdiction

Limitation

Restitution

Restoration

Scope

Stay of execution

Stay of suit

—Ss 151 152 153 and Evid Act S 91—
*Amendment—Application to amend mistake in mortgage
 deed preliminary and final decrees as to extent of inte
 rest mortgaged—If permissible*

Where after the passing of a final decree on a mort
 gage an application is made under Ss 151 152 and 153

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1939

AIR 1939 All 231

—Ss 151 and 152—*Amendment of decree—Ques
 tion of costs raised in both first and second appeals—
 Dismissal of appeals—Effect of—Amendment of first
 appellate decree relating to costs—If competent*

Where the question of costs was raised by the
*cont for an amendment of the decree in both 1)
 and second appeals which were dismissed the
 must be presumed to have been adjudicate
 adversely to him. In such circumstances no
 tion by him for amendment of the decree rela*

—Ss
application

It is not
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 —*Applicat*
can be alle

A decree
 powers conferred under Ss 151 and 152 C P Code,
 long after it was passed so as to prejudice the rights
 acquired by third parties in the property affected by

C. P CODE (1908), S 151

BHAD

10110 110-41 BOM LR 800-
AIR 1939 Bom 389

—S 151—Appeal

No appeal lies from an order passed under S 151 C
 P Code (*Tek Chand and Abdul Rashid, JJ*)
GANESH DATTA v MODEL TOWN SOCIETY

AIR 1939 Lah 508

—S 151—Appeal—Amendment of decree to
 correct description of property—Power of Court—
 Refusal to amend—Appealability *See C P CODE, S*
47 41 BOM LR 1170

—S 151—Appeal—Application under O 21, A 90
 —Order restoring possession to judgment debtor pending
 its decision—Appeal—Revision

An appeal was filed against an order rejecting as in
 competent an application filed by the judgment debtor
 under O 21 R 90, C P. Code. In the meantime the
 sale was confirmed and the auction purchaser took pos
 session. The Appellate Court allowed the appeal and
 remanded the case to be heard on the merits. The lower
 Court passed an order restoring possession of the prop
 erty to the judgment debtor acting under S 151 C P
 Code

Held (1) that the order was really in the nature of an

ILR (1939) 2 Cal 378=70 CLJ 160=
43 OWN 1028

151—Appeal—Order amending final decree

151—Right of appeal—Proper procedure—

Appeal from amended decree—Competency

The nature of an order is not determined by the pro
 vision of law to which it may wrongly have been as
 signed. The true test is what is the order itself. A

under S 151 it is appealable. The right of appeal is a
 creature of the statute and unless there are express pro
 visions of law relating to the maintainability of an

C P. CODE (1908), S 151

appeal, it would not be correct to say that because an appeal is allowed by statute in certain cases it must be allowed by way of analogy in other similar cases. Where an application for restitution is made under S 151, C P. Code and is treated as such by the Court and an order is passed it is not appealable. (*Zia ul Hasan, C J and Sivasatam, J*) *BRIJ MOHAN SINGH v RAMESH SINGH* 183 I.C. 709 = 12 R.O. 58 =

1939 A.W.E. (C.C.) 127 = 1939 O.W.N. 765 =

1939 O.A. 636 = 1939 O.L.R. 544 =

A.I.R. 1939 Oudh 273

—S 151—Applicability—Appeal dismissed for failure of appellant to file appellant's list or make

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set treated as an application for review. Under O 47, R. 1, C. P. Code, the new matter or evidence should have been discovered by the party applying for review and not by the Court whose order is to be reviewed; and secondly, the error or mistake referred to in the rule

evidence subsequently discovered or a mistake or error apparent on the face of the record. Nor would O. 41, R. 19, C. P. Code, apply to such an application for restoration of an appeal dismissed under R. 23 of Ch. IX, Part II of the rules framed by the

for failure to file the appellant's list. the list stands on no worse footing; referred to in Rr 11, 17 and 18 although there is no provision in the Code covering the case of restoration of an appeal dismissed for failure to file the list or to deposit the printing cost, the Court is not powerless to restore the appeal. If the Court has power to dismiss an appeal for such failure, it also has the power to restore the appeal in a proper case. S

C P. CODE (1908), S. 151

the suit itself and the same kind of investigation is necessary as in a contested suit. Further it cannot be said that there was any fraud practised upon the Court which would justify it in exercising its inherent power. (*Mukherjee and Roxburgh JJ*) *SURISH CHANDRA SEN v. JUGESH CHANDRA SEN*, 69 C.L.J. 533 =

43 C.W.N. 969 = A.I.R. 1939 Cal 658 —S 151—Execution sale—Power to set aside before confirmation

No doubt the Court has inherent power under S. 151, C. P. Code, to set aside an execution sale before its confirmation, where there is an abuse of the process of the Court. But there is certainly no jurisdiction to set

the application of a ing to a misappre- other third party he be sale and therefore otherwise if that had ing procedure on the

UBODH CHANDRA

MALLICK v. AJUDHYA HAIUI 182 I.C. 649 = 12 R.C. 92 = 43 C.W.N. 250 = A.I.R. 1939 Cal 161.

—S. 151—Inherent powers—Exercise of—Condi- tions—Ends of justice—Test of.

S. 151, C. P. Code, should be applied with great ure its ends of a parti- nly the party made li and

Agarwala, JJ) *KAM KHELAWAN SINGH v. MONI- LAL SABU*. 20 Pat L.T. 883 = 1939 P.W.N. 832 = A.I.R. 1939 Pat. 678 (F.B.).

—S. 151—Inherent powers—Review—Power of order of predecessor—O. 47

intended to constitute one liate authority over his pre- decessor of like jurisdiction as himself. If one Judge reviews the order of another, he cannot escape the provisions of O. 47, C. P. Code, by placing his order under S. 151. Both S 151 and O 47 are to be construed strictly and are not intended to be used to allow one Judge to sit in appeal on orders of his predecessor

S. 151

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for enquiry in such matters is something extraneous to powers of the Court and hence no appeal can be in

1938 A.M.L.J. 121.
emand under inherent power—Appeal makes no provision for an appeal is been remanded under the

C P CODE (1908), S 151

a case (Davies) HAZARI v PARTABA

1939 A M L J 110
 —S 151—Restitution—Case not falling under S 144—Relief under inherent powers. See C P CODE, Ss 144 151 AND 47. A I R 1939 Nag 101

—S 151—Restoration—Application under O 21 R 90—Dismissal for default—Inherent power of Court

not apply to pro-
 therefore O 9, Rr
 as inherent power
 under S. 151 C P CODE, to file an application in
 execution proceeding which has been dismissed for

and order confirming the sale was passed. A few minutes after the order was passed judgment debtor's pleader appeared and presented an application under O 9 Rr 4 and 9 and Ss 141 and 151 for setting aside the order. The Court did not apply its mind to the merits of the application for restoration but dismissed it *in limine* on the technical ground that no such applica-

—S 151—Restoration—Order dismissing for default petition of compromise

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—S 151 and O 7, R 13—Restoration—Powers of—Rejection of plaint under O 7, R 13

Though a plaint is rejected under O 7, R. 13 a Judge has jurisdiction under S 151 C P Code to restore the suit (Allsup, J) ANANT PRASAD SINGH v CHUNNU TEWARI

183 I C 426 = 12 E A 132 =
 1939 A L J 335 = 1939 A W R (H C) 325 =
 A I R 1939 All 452

—S 151—Scope of inherent jurisdiction—Applica-
 tion to set aside execution sale under S 151—If main
 untenable

S 151 of the C P Code does not confer an unlimited

materials of a house only is incompetent where the decree holder had submitted to the sale and had acquiesced in it and had allowed

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 of the C P.

C P CODE (1908), S 152

Code nor was it intended to oust the provision of the law. It was intended merely to supplement the provisions of the Code and to provide a means of serving justice when the law provided none. It was intended to override the plain and express enactment of the law (Davis, J C and Weston, J) MIR HAJI GHULAM SHAH v KHANCHAND I L R (1939) Kar 330 = 182 I C 154 = 11 E S 250 = A I R 1939 Sind 137

—S 151—Stay of execution—Case not coming under O 45 R 13—Inherent powers

It is open to the High Court to exercise its powers under S 151 and stay the execution of the decree, within the terms against a decree or stay of execution stay was dismissed. Council was also applied for execution of the decree and it was fixed on 7th January 1939 for final orders. Defendant had taken steps to file an application to the Privy Council for special leave to appeal and for stay of execution. But, it was not physically possible for the defendant to file his application before 16th January, 1939. He therefore filed an application to the High Court to make an order directing for special leave

he case the High
 under its inherent

(Mukherjee, J J)

COMMISSIONERS

183 I C 565 =

R 1939 Cal 308

—S 151—Stay of suit—Balance of convenience

In order to justify a stay of a suit it is, as a rule,

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—S 152—Accidental omission—Preliminary decree against legal representatives of mortgagor—Correction of error—Power of Executing Court—Omission by legal representatives to object in previous execution application—Effect of

Where in a suit instituted against the legal representatives of a deceased mortgagor as such the Court passes a personal decree against them, there is an accidental omission in the decree in failing to limit their liability. The Court has power under S 152 C P Code, which it should exercise to correct the omission in the decree. The Court is not debarred from exercising

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omission by the legal representatives to raise an objection to the form of the decree in a previous execution

GANESH PRASAD AGARWALLA v MONOHARLAL

I L R (1939) 1 Cal 305 = 43 C W N 490

—S 152—Amendment of decree—Application for—If can be made after decree is barred

C. P. CODE (1908), S. 152

Although there is no limitation for an application to amend a decree under S. 152, C. P. Code, it is obvious that such an application must be made before the decree has become unexecutable owing to the 12 years limitation provided by s. 48, C. P. Code (*Norman, J. C. S.*)
JOHNI LAL v. AZIMAN, 1939 A.M.L.J. 27.

—S. 152—Amendment of decree—right of purchaser of decree.

A person who purchases a decree purchases the rights in the decree and if one of these rights vesting in the vendor is a right to have the decree amended under the law, this right also passes to vendee. (*Blecher, J.*)
JAI BHAGWAN DAS v. OM PARKASH, 182 I.C. 830 = 12 R.L. 77 = 41 P.L.R. 99 = A.I.R. 1939 Lah. 255

—S. 152—Applicability—"Accidental slip or omission"—Omission to award further interest—Amendment—Power of Court when decree in accordance with judgment. See C. P. CODE, ss. 34 (2) AND 152.
50 L.W. 719 = (1939) 2 M.L.J. 751.

—S. 152—Mistake made in both judgment and decree—Power of Court to correct.

accidental. (*Monroe, J.*) KISHEN LAL v. SURJA.

41 P.L.R. 119

—O. 1, R. 1—Same transaction—Relief in respect of, claimed by defendant against co-defendant—Such defendant if can be added as plaintiff.

Where a defendant in a suit claims relief as against a co-defendant, in respect of the same transaction as that with reference to which the suit is brought, he could be added as a co plaintiff for, if he brought a separate suit a common question of law and fact would arise (*Wort, Ag. C. J. and Manohar Lal, J.*)
NILURIPPATRA COAL CO., LTD. v. NORTH BURRAKKA COAL CO., LTD. 178 I.C. 286 = 5 R.R. 79 = A.I.R. 1939 Pat. 157.

—O. 1, R. 8—Applicability—Various plaintiffs putting forward varying legal claims in support of right—Leave to maintain representative suit—If can be granted.

claims are put forward, some claiming to be owners, some to be permanent tenants, some to be tenants entitled to certain benefits under the City Tenants' Protection Act and others having no other title than that of being mere trespassers, the Court cannot be said truly to represent the occupants, unless they reduce themselves

C. P. CODE (1908), O. 1, R. 8.

is wholly immaterial. (*Tek Chand and Dalip Singh, J.J.*) FAZL RAHIM KHAN v. HUSSAINA.

A.I.R. 1939 Lah. 572.
—O. 1, R. 8—"Same interest"—Meaning of.

What O. 1, R. 8, C. P. Code, contemplates is that the plaintiff or plaintiffs must have a common interest with those whom he or they claim to represent. All that is necessary is that there must be a common interest and a common grievance. (*Venkatasubba Rao and Abdur Rahman, J.J.*)
MANAVEDAN v. VEERAYAN UNNI, 1939 M.W.N. 458 = A.I.R. 1939 Mad. 751.

—O. 1, R. 8—Scope of.

O. 1, R. 8 does not draw a distinction between cases (1) in which the public or a large part of the public, are interested in the subject-matter of dispute and some persons sue, or are sued, on behalf of this indeterminate body, and (2) cases in which the persons interested are named in the record and only some of them have been permitted to sue or defend the suit as a matter of convenience, because after an order under O. 1, R. 8 has been passed, the only effective parties to the suit or

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A.I.R. 1939 Lah. 572.

—O. 1, R. 8—Scope of—Suit in their own right by some members of a community—If affected.

O. 1, R. 8, C. P. Code is only an enabling section and it does not debar some of the members of a community from maintaining a suit in their own right; but it may not affect persons who are no parties to it. (*Thom, C. J. and Ganga Nath, J.*)
RAM KALI v. MUNNA LAL.

184 I.C. 620 = 12 R.A. 260 = 1939 A.W.R. (H.C.) 515 = 1939 R.D. 390 = 1939 A.L.J. 821 = A.I.R. 1939 All. 586.

—O. 1, R. 8—Scope—Village temple—Alienation of properties by pujaries—Decree for sale—Representative suit on behalf of villagers for declaration of invalidity of alienation and for injunction to restrain sale—Maintainability.

A suit by certain persons on behalf of the villagers of a village for a declaration that the suit property is

a mortgage decree obtained by them, can be maintained under O. 1, R. 8 C. P. Code, apart from the provisions of S. 92, C. P. Code. The existence of a more effective remedy is obviously no answer to the suit and cannot justify its dismissal. (*Patanjali Sastri, J.*)
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C P CODE (1908) O 1, R 8

ing them from further trespass or for damages for trespass actually committed by them (*Harries, C J and Rowland J*) **RAJA BRAJA SUNDER DEB v MANI BEHERA** 5 CLT 35

—O 1, R 8—Tort—*See*
—Maintainability *See*

—O 1 R 9—*See*
dismissal of suit

O 1 R 9 C P Cod
subject to no qualification whatever. No suit whatever is to be defeated by the non joinder of parties and in every suit the Court is to proceed to do justice as between the parties threatened notwithstanding if there has been non joinder. It is for the Court to decide in each case

party not impleaded must depend on the facts and circumstances of each case (*Phon C J and Ganga Nath, J*) **KUNJ BEHARI L**

181 IC 448 = 11 RA

1939 A W R (H C) 21

—O 1 R 10—*Addition*
subject to appeal or revision

An order made by an appellate Court adding a third person as a party is not appealable as an order under O 1 R 10 does not find a place in O 43 R 1. It is also not one which can be assailed in revision because it is clearly an interlocutory order (*Thomas, C J and Yorke J*) **BRIJ MANOHAR v RAMANAND**

14 Luck 447 = 179 IC 1004 = 1939 O A 228 =

1939 O L R 105 11 RO 223 =

1939 O W N 181 = A I R 1939 Oudh 102

—O 1 R 10—*Necessary parties added as to defendants instead of as co plaintiffs—Grant of appropriate relief*

One or more of several per se

that a wrong person had originated no cause of action. Once all Court the Court can make it should give judgment in favor of whether they be joined.

A person executed a mortgage. Subsequently some of the partners retired assigning their interest in favour of the remaining partners by unregistered deed. The remaining partners brought on record the retiring partners as co-defendants instead of as co plaintiffs. The plaintiff brought on record the retiring partners as co-defendants.

Held, that it would have been more satisfactory that the retiring partners should have been brought on as co-defendants but even whole of the necessary parties were before the Court.

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11 R P C 235 = 1939 O W N 626 =
1939 A W R (P C) 136 = 70 C L J 261 =

41 Bom L R 1127 = 50 L W 826 =

1939 A L J 863 = 182 IC 1 = 1939 O L R 492 =

5 B R 750 = 43 O W N 839 = A I R (1939) 2 M

—O 1 R 10—*Powers of Court of parties—Limits to Court's powers*

C P CODE (1908) O 1 R 10.

Although under O 1 R 10 C P Code the Court has wide powers to add parties to a suit or proceeding merely because a person claims to be interested in a suit and wants to be added as a party to the suit.

A I R 1939 Bom 188
—O 1 R 10—*Powers of Court under—Transposition*

The purpose of the rule is a position to determine the real questions in controversy between the parties and to avoid a flowing a mere technical objection success fully to defeat a suit.

1939 F W N 829 = A I R 1939 Pat 397

—O 1 R 10—*Transposition of parties—Suit by assignee of mortgage right—Mortgagee impleaded as defendant—Assignee found invalid owing to registration being void—Application to transpose mortgage as plaintiff in appeal and for decree on mortgage—Maintainability*

Where in a suit brought by an assignee of a mortgage right to enforce the mortgage impleading the mortgage assignor also as a defendant it is found that the assignment deed is invalid as a result of invalid registration, if an application is made in appeal to transpose the

A I R 1939 Mad 467
—O 1 R 10 (2)—*Construction—Addition of new*

new party must be joined as plaintiff or defendant, or that the presence of that effectively and all the questions again be raised.

Interest adverse to plaintiff—Striking out as plaintiff and transposing as defendant as necessary party—Expediency

When a party is not a party to the suit, it is not necessary to add it as a party to the suit.

Suit for arrears of instalments alone—Second suit for entire balance—If barred

Where although a Cause of action for the recovery of the whole amount of the debt exists, the creditor agrees to forbear and not to sue upon that cause of action so long as the debtor pays him a certain sum a month and until the monthly instalments are at least three months in arrears, the remedy of the creditor in the event of the failure of the debtor to pay three consecutive instalments is to sue for the whole balance of the debt. If, on the other hand, he sues only for the arrears of instalments, a subsequent suit by him for the balance of the debt is barred by O 2, R 2, C P Code.

MAHOMED AFZAL v MAHMED ISMAIL

1939 Rang L R 180 = 183 I C 425 = . . .

AIR 193

—O 2, R 2—Scope—If subject to

11—Partition suit—Failure to ask for mesne profits from date of suit until delivery—Fresh suit for recovery of mesne profits—If barred.

O 2, R 2 must be read with Expt 5 to S 11 and the relief claimed under Expt 5 to S 11 is a relief arising from the same cause of action. The fact that a plaintiff may under O 2, R 4 join in one suit two causes of action does not mean that he must necessarily do so, or fall under the bar imposed by O 2. Expt 5 A plaintiff may of course antic for partition that certain property will fall he may anticipate that after the final decree be given delivery of possession and he may in his suit for partition ask for mesne profits from the date of suit until delivery of possession. But if he does not do so another suit for recovery of mesne profits is not barred (Datta,

v. KISHI

—C

suit—S:

rendered the security insufficient—If proper

The joinder of causes of action and parties is not invariably fatal to the suit. No doubt the misjoinder of claims and parties is to be discarded to defeat the ends of justice would be unexceptionable unless defence will be embarrassed by issues and proofs in the same

C. P. CODE (1908), O, 5, R 17.

12 R B 192 = 41 Bom L R 530 =

AIR, 1939 Bom 347.

—O 3, R 4—Functions of ministerial nature—Power of pleader to delegate.

To act for a client in Court is to take on his behalf in the Court, or in the offices of the Court, the necessary steps that must be taken in the course of the litigation in order that his case may be properly laid before the Court. But there is nothing in O 3, R 4, which prohibits a pleader from delegating some of his functions, and the Code plainly contemplates that certain functions of a ministerial nature may be delegated. A ministerial

which does not the pleader and of facts or cir-

in qui facit per pply. When a

plant or memorandum of appeal has been drawn up and signed by a pleader duly authorized under O 3, R 4, there is nothing contrary to the provisions or the spirit of that Rule in the mechanical act of handing over the papers to the Court, or the officer appointed, being performed by a clerk or another pleader to whom the duty of performing that act has been delegated by the duly authorized pleader. The presentation of the plaint or

—O 4, R 1—Presentation of plaint—Same Judge presiding at two places.

Where the same Judge has to preside over two

MATHURA PRASAD,

1939 N L J 503

—O 5 Rr. 15 and 17 (as amended in Bengal)—

of judgment—

his name—

—Validity of

C P. Code,

on the heirs of a deceased judgment debtor who were

attorney of the said

O 5, R 17—Applicability—Service of notice
112, Madras Estates Land Act—Service by
—When to be ordered—Due and reasonable
—If to be proved. See MADRAS ESTATES
ACT, S. 112. (1939) 1 M L J 618.

C. P. CODE (1908), O. 5, R. 17.

—O. 5, R. 17—*Notice—Service—Endorsement of refusal—Copy of notice neither offered to person to be served nor affixed to his residence—Sufficiency of service.*

Where on the reverse of a notice it is noted that the person to be served with that notice is not thumb impression thereto in token informed of the contents of the copy of the notice was either offered to him or affixed to his abode, the service complies with the provisions of C (Darling, S.M. and Mehta, MANGAL SEN, 1939 E.D. 929= 1939 A.W.R. (B.R.) 54

—O. 5, R. 19—*Scope—Express declaration of sufficiency of service of summons—Absence of—Effect of—If ground for holding that summons has not been duly served—Implied declaration—Inference from circumstances.*

It is of course desirable that all Courts should observe

C. P. CODE (1908), O. 6, R. 17.

case involving fresh trial with fresh pleadings and fresh evidence, it ought not to be allowed. (*Stone, C.J. and Bose, J.*) *BADRIDAS v. RAJA PRATAPGIR* 1939 N.L.J. 525.

—O. 6, R. 17—*Amendment of plaint—Limitation*

—O. 6, R. 17—*Amendment without notice to other side—Propriety.*

Where a plaint was returned for amendment and was amended without notice to the other side, and the amendments were all important, the order was set aside and case remanded for trial on the original plaint. (*Davies.*) *GOPAL v. KANI RAM.* 1939 A.M.L.J. 112 (1).

—O. 6, R. 17—*Amendment—Scope—Notice to other side*

1938 A.M.

—O. 5, R. 20(2)—“Effectual”—Meaning
LIMITATION ACT, ART. 164. 1939 Rang I

—O. 6, R. 5—*Filing of replication—Discretion of Court to reject.*

O. 6, R. 5, C.P. Code, only permits a better statement

—O. 6, R. 14 and 15—*Scope*
O. 29, R. 1. See C. P. CODE, O. 29.

—O. 6, R. 14—*Signing of pleading—Authority necessary.*

R. 14 of O. 6, C.P. Code, which requires a pleading to

material. (*Gr*
BADRI PRASA

—O. 6, R. 17—*Amendment of plaint—Limitation*

O. 6, R. 17, C. P. Code, restricts amendments to matters necessary for determining the real question in controversy between the parties. Where the amendment sought would introduce a new and inconsistent

—O. 6, R. 17—*New case—Surprise to defendant—Duty of Court.*

Courts must be careful not to allow, a *volte de face* the complexion of the defendant with a surprise expected to be prepared. (*Id.*) S. 86 of the Agra

1939 E.D. 274=1939 A.L.J. (Supp.) 66.

—O. 6, R. 17—*Plea not raised at the beginning—omission—Later amendment, if can be*

has been no valid ground or excuse to raise certain pleas at the very beginning, amendment to permit those raised at a late stage, should be refused. (*Bose, J.*) *BADRIDAS v. PRATAPGIR.* 1939 N.L.J. 525.

—O. 6, R. 17—*Powers of Court—Limits to.*
No doubt the powers of the Court to permit amendments under O. 6, R. 17 are very wide and should be free exercised, but the exercise of this jurisdiction in

C P CODE (1908) O 6 R 17

he resorted to where prejudice is likely to r other side which cannot be compensate (*Davis J C and Lohr J*) GOPAL DAS MO LOKANATH CHELLARAM I L R (1939) 182 I C 718-12 R S 25 = A I R 1939

—O 6 R 17—*Power of Court—possession by title—Power to compel so as to allege possession and dispossess*

Where the plaintiff bases his claim for possession on his title and defendant alleges adverse possession the Court must determine the rights of the plaintiff on the plaintiff as it is framed and not on one which in the opinion of the Court would be proper. It is not open to the Court to compel the plaintiff to amend the plaint so as to allege possession and dispossess (*Abdul Hashid J*) MEHTAB SINGH v. DAVAL SINGH 183 I C 140-12 R L 99 41 P L E 715 = A I R 1939 Lah 172

—O 6 R 17—Scope—If to be read with O 7 R 11 See C P CODE O 7 R 11

—O 6 R 17—Scope—Suit for declaration of right in certain money held by deceased in provident fund and for injunction—Amendment to include prayer for administration—Permissibility See C P CODE S 42 41 Bom L R 787 A I R 1939 Sind 107

—O 6 R 17—Scope—Suit for declaration of title and possession—Amendment to strike out prayer for possession to avoid payment of additional court fee—Permissibility See COURT FEES ACT S 7 IV (c) 1939 P W N 61

—O 7—Applicability to appeals

Provisions of O 7 by reason of S 141 of the Code apply *mutatis mutandis* to memoranda of appeals as well as to plaints (*Davis J C and Weston J*) MOONMAL v. LAL SINGH I L R (1939) Kar 527-183 I C 757 12 R S 80 A I R 1939 Sind 221

—O 7 R 11 and S 107 (2)—Insufficiently stamped memorandum of appeal—Procedure to be followed—Granting of time to make good deficiency—Necessity

According to O 7 R 11 C P Code where a plaintiff has properly valued the relief he must be given an opportunity to make good the deficiency in the court fee before his plaint is rejected and the same rule applies to a memorandum of appeal by reason of the effect of S 107 (2) C P Code (*Wort and Agarwala JJ*) SARJUG PRASAD SAHU v. SURENDRAPAT TEWARI 178 I C 976 5 B R 160 = 11 R P 318 = 1939 P W N 166 = 20 Pat L T 79 = A I R 1939 Pat 137

—O 7 R 11—Scope—Mandatory character of—If admitted—Power of Court to amend plaint in case of non-compliance—O 6 R 17—If to be read along with O 7 R 11

O 7 R 11 C P Code no doubt uses the words 'shall reject' which are mandatory words. But *prima facie*

C P CODE (1908) O 8, R 6

as provided is applicable to order. An order of appeal without or to explain or law and unsound J) RAMGATI 180 I C 791 = 5 B R 488 = A I R 1939 Pat 432

SINGH v. SHITAB SINGH

11 R P 539 = 20 P L T 426 = 5 B R 488 = A I R 1939 Pat 432

—O 7 R 11 (c)—Rejection of plaint—Duty of Court—Insufficiently stamped memorandum of appeal—Granting of time to make up defect—Considerations

Before rejecting a plaint under O 7, R 11 (c) it is the duty of the Court to require the plaintiff to make good the deficiency in stamp with a time to be fixed. Where a memorandum of appeal is insufficiently stamped either because there is a doubt as to the court fee payable or that it could not be a certain before the receipt of the records and an honest attempt had been made by the appellant to comply with the requirements of law the memorandum of appeal may be received and time granted to make up the deficiency that may be found to be due (*Dhaval and Agarwala JJ*) RAM SAWARI KUER v. DULHIN MOTIRAJ KUER 17 Pat 687 = 178 I C 150 = 5 B R 59 = 11 R P 220 = 19 Pat L T 885 = 1939 P W N 166 = A I R 1939 Pat 83

—O 7 R 13—Rejection under—Restoration—Power under S 151 See C P CODE S 151 AND O 7 R 13—RESTORATION 1939 A W R (H C) 325

—O 8 R 6—Plea of set off—Claim if should be within limitation

In order that a set off might be pleaded, it would have to be within the period of limitation at the time the action of the plaintiff is brought (*Wort Ag C J*) BUDHU v. SITAL SINGH 5 B R 202 = 11 R P 331 = 178 I C 172 = A I R 1939 Pat 142

—O 8 R 6—Scope—Landlord taking advances and buying goods from tenant—Understanding to set off dues against rent—Rent suit by landlord—Tenant not claiming set off but filing cross suit—Cross suit, if barred—C P Code S 11

Plaintiff a shopkeeper and a tenant of the defendant from time to time advanced money and sold goods to the defendant on the understanding that the amounts due to him from the defendant in respect of these transactions should be set off against the rent payable to the defendant as they fell due. In spite of this arrangement defendant sued the plaintiff for arrears of rent. The plaintiff while he denounced the advances in his written statement in that suit did not claim a set off under O 8 R 1 C P Code but instituted a cross suit against the defendant for the amounts due to him. Both the suits went side by side and both were decreed in favour of the plaintiff. The plaintiff's claim was not barred and ought to be allowed.

C P CODE (1908), O. 8, R. 6

—O 8 R. 6—*Time-barred claim—If can be pleaded by way of set off*

Set off is a creature of statute and is governed by O. 8 R. 6 C. P. Code although the latter part of the rule indicates that there may be a set off other than that provided by the rule. Under this rule, a claim barred by the law of limitation cannot be pleaded by the defendant by way of set off. The fact that the transactions which were the subject matter of the claim and of the set off were with regard to the same estate is immaterial. *(Horr, J.)* UMA PRASAD SINGH v. SHIVA KANT PRASAD SINGH 5 BR 705—181 IC 1006—11 RP 651—AIR 1939 Pat 667.

—O. 9, R. 2 and 4—*Power of Court—Date not fixed for appearance of defendant—Order requiring plaintiff to file process fees and copies of plaint—Non-compliance—Dismissal of suit—Legality*

A Court has no power to require a plaintiff to file process fees or copies of the plaint before fixing a date for the appearance of the defendant. Such an order is illegal and failure to comply with it does not entail dismissal of the suit. A dismissal of the suit for failure to comply with such an order is without jurisdiction. *(James, J.)* SRIPATI SARAN PRASAD SINGH v. IN DARJIT MAHTON 179 IC 563—5 BR 284—11 RP 397 (1)—19 Pat LT 254—AIR 1939 Pat. 160.

—O. 9, R. 4—*Restoration of suit—Duty of Court*

obstruction or deliberate delay with a view deliberately to lengthen proceedings. The dismissal of suits without considering whether payment of costs will not meet the situation so far as the opposite side is concerned must be deprecated. *(Dalip Singh)* RAMZAN v. MAHOMED AKBAR.

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—O. 9, R. 6—*Ex parte suit—Necessity.*

Ex parte suit is as much a judicial proceeding as a contested suit. Plaintiff has to prove his case by evidence and it is for the judge to hear and decide on it. This cannot be left to the Reader of the Court. *(D R Norman)* SUKH RAM v. LALTA FENSHAD FERBHU DAYAL 1939 A.M.L.J. 72

—O. 9, R. 6 and 7—*Scope—If to be enforced as penal provisions—Defendant declared ex parte—Right to appear afterwards and file written statement and take part in trial—Suit not past the stage of framing of issues—Powers of Court.*

The object of Rr. 6 and 7 of O. 9, C. P. Code, will be frustrated if defendants could be allowed to absent themselves with

But where, in parties is regressed, there applied as penal provisions depriving parties of the opportunity of putting forward their defence. It will not, in any sense, be reopening what has happened in the past if a defendant who has been declared *ex parte* should be permitted to file a written statement, when

issues. In such a case a defendant who has been declared *ex parte* is entitled to file a written statement and proceed with the trial by cross examining the plaintiff's witnesses and also by leading evidence on his own

C. P. CODE (1908), O. 9, R. 1

behalf. In the absence of a statutory restriction in the Code corresponding to O. 6, R. 2 of the High Court Original Side Rules, mofussil Courts cannot impose any restriction on a defendant set *ex parte* continuing the suit at the stage at which it stands when he appears so long as he does not thereby reopen anything that has been done already. *(Varadachariar J.)* PERUMAL NAICKEN v. KONDAMA NAICKEN

1939 M.W.N. 110—49 LW 372—AIR 1939 Mad 385—(1939) 1 M.L.J. 64

—O. 9, R. 8 and O. 17, R. 2—*Exercise of powers under—Respective stages.*

Courts should not lightly dispose of litigation without going into the merits. It is also equally plain that Courts are bound in certain circumstances to dismiss cases for default. One case is that indicated in O. 9, R. 8. It is true that when a case reaches the stage where the issue stage has in part been passed, the Court is not compelled to exercise its powers under O. 9, R. 8 but is given power to make another order under O. 17, R. 2, and in any doubtful case the Court should so act. *(Stone, C.J. and Bose, J.)* MANEKLAL BHIMRAJ v. PHULABAI I.L.R. (1939) Nag 574—184 IC 102—12 R.N. 93—1939 N.L.J. 351—A.I.R. 1939 Nag 215.

—O. 9, R. 9—*Applicability—Pauper application—Duty of Court to decide on merits*

O. 9, R. 9 C. P. Code, does apply to a pauper petition by reason of S. 141, C. P. Code, if the Court has jurisdiction.

worth, J.) KRISHNA RAO v. JANAKI AMMAL

1939 M.W.N. 408—49 LW 543—AIR, 1939 Mad 681—(1939) 1 M.L.J. 728

—O. 9, R. 9—*Applicability—Proceedings under*

RAM DAYAL BABU LAL v. LAKHU SAG.

1939 F.W.N. 699—20 Pat LT 768.

—O. 9, R. 9—*Applicability—Suit adjourned for production of plaintiff's witnesses—Plaintiff's pleader absent on adjourned date—Application for a joinder by another advocate refused—Plaintiff not giving evidence—Dismissal of suit—If one for default or on merits. See C. P. CODE, O. 17, R. 2 AND 3*

60 L.W. 430.

—O. 9, R. 9—*Sufficient cause—Minority of plaintiff—Dismissal, if to be set aside on that ground*

The fact of minority of a plaintiff is not by itself a sufficient cause for setting aside any order of dismissal to the absence of the next reasons for such absence. P. Code to warrant a distinct followed where the suit is

filed on behalf of a minor. The question of what is sufficient cause within the meaning of O. 9, R. 9, C. P. Code has to be decided with reference to various circumstances and the fact of the minority of the plaintiff is only one of such circumstances to be taken into

consideration. *(Mulla, J.)* KHATUN v. KHATUN (CC) 141—

20 W.N. 787.

—O. 9, R. 13 has no application to execution proceedings, but only to decrees in suits or in proceedings in administration or guardianship akin to suits. 17 All 106

C P CODE (1908) O 6 R 17

be resorted to where prejudice is likely to result on other side which cannot be compensated in
(*Davis J C and Lobo J*) GOPAL DAS MOTHAR
LOKANAI CHELLARAM I L R (1939) Kar 4
182 IC 718-12 RS 25-AIR 1939 Sind

—O 6 R 17—*Four of Court—Plaint for possession based on title—Order to compel an alien to go to all go possess and trespasser*

Where the plaintiff bases his claim for possession on his title and defendant alleges adverse possession, the

C P CODE (1908) O 8 R 6

deficiency in stamp within a time to be fixed Where a memorandum of appeal is insufficiently stamped either because there is a doubt as to the court fee payable or that it could not be ascertained before the receipt of the records and an honest attempt had been made by the appellant to comply with the requirements of law the memorandum of appeal may be received and time granted to make up the deficiency that may be found to be due (*Dhale and Agarwala, JJ*) RAM SAWARI
KUEER L DULHIN MOTIRAJ KUEER 17 Pat 687-
178 IC 160-5 BE 59-11 RP 220-
19 Pat LT 885 1939 PWN 162-
AIR 1939 Pat 83

make good the deficiency in erroneous in law and unsatisfactory (*Harris, C J and Rowland, J*) RAMGATI
SINGH v SHITAB SINGH 180 IC 791-
11 RP 539-20 PLT 426-5 BE 488-
AIR 1939 Pat 432

..

183 IC 140-12 RL 99 41 PLR 715-
AIR 1939 Lah 172

—O 6 R 17—Scope—If to be read with O 7
R 11 See C P CODE O 7 R 11

41 Bom LR 787
—O 6 R 17—Scope—Suit for declaration of right in certain money held by deceased in provident fund and for injunction—Amendment to include prayer for administration—Permissibility See C P CODE S 42
AIR 1939 Sind 107

—O 6 R 17—Scope—Suit for declaration of title and possession—Amendment to strike out prayer for possession to avoid payment of additional court fee—Permissibility See COURT FEES ACT 5 7 (IV) (c)
1939 PWN 61

—O 7—Applicability to appeals
Provisions of O 7 by reason of S 141 of the Code apply *mutatis mutandis* to memoranda of appeals as well as to plaintiffs (*Davis J C and Weston J*)
MOOLCHAL v LAL SINGH I L R (1939) Kar 527-
183 IC 757-12 RS 80-AIR 1939 Sind 221
—O 7 R 11 and S 107 (2)—*In sufficiently stamped memorandum of appeal—Procedure to be followed—Granting of time to make good deficiency—Necessity*

According to O 7 K 11, C P Code where a plaintiff has properly valued the relief, he must be given an opportunity to make good the deficiency in the court fee before his plaint is rejected, and the same rule applies to a memorandum of appeal by reason of the effect of S 107 (2), C P Code (*Wort and Agarwala JJ*) SARJUG PRASAD SAHU v SURENDRAPAT TEWARI 178 IC 978 5 BE 160-11 RP 318-
1939 PWN 166-20 Pat LT 79-
AIR 1939 Pat 137

—O 7 R 11—Scope—Mandatory character of—*If ab initio—Power of Court to amend plaint in case of non-compliance—O 6 R 17—If to be read along with O 7 R 11*

O 7 R 11, C P Code no doubt uses the word 'reject' which are mandatory words. But *prima facie* the rule is mandatory only *retus sit stantibus*, that is, when the Court has to deal simply with the referred to in the rule and would not preclude amendment of the plaint which under O 6, R 17 C F may be made at any stage of the proceedings
rules, O 6 K 17 and O 7 R 11 should be read together (*Broomfield and Macklin JJ*) MAHANT
NARSIDASJI v BAI JAMNA 41 Bom LR 787-
AIR 1939 Bom 354

—O 7 R 11 (c)—Applicability—Appeal in insufficiently stamped—Procedure—Duty of Court—Summary rejection—Propriety

Where memorandum of appeal is insufficiently stamped, the Court should call upon the appellant to make

the deficiency in stamp within a time to be fixed Where a memorandum of appeal is insufficiently stamped either because there is a doubt as to the court fee payable or that it could not be ascertained before the receipt of the records and an honest attempt had been made by the appellant to comply with the requirements of law the memorandum of appeal may be received and time granted to make up the deficiency that may be found to be due (*Dhale and Agarwala, JJ*) RAM SAWARI
KUEER L DULHIN MOTIRAJ KUEER 17 Pat 687-
178 IC 160-5 BE 59-11 RP 220-
19 Pat LT 885 1939 PWN 162-
AIR 1939 Pat 83

—O 7, R 13—Rejection under—Restoration—Power under S 151 See C P CODE S 151 AND O 7 R 13—RESTORATION 1939 AWR (HC) 325

—O 8 R 6—Plea of set off—Claim if should be within limitation

In order that a set off might be pleaded it would have to be within the period of limitation at the time the action of the plaintiff is brought (*Wort AgC J*)
BUDHU v SITAL SINGH 6 BE 202-
11 RP 331-179 IC 172-
AIR 1939 Pat 142

—O 8 R 6—Scope—Landlord taking advances and buying goods from tenant—Understanding to set off dues against rent—Rent suit by landlord—Tenant not claiming set off but filing cross suit—Cross suit, if barred—C P Code S 11

Plaintiff a shopkeeper and a tenant of the defendant, from time to time advanced money and sold goods to the defendant on the understanding that the amounts due to him from the defendant in respect of these transactions should be set off against the rent payable to the defendant as they fell due. In spite of this arrangement defendant sued the plaintiff for arrears of rent. The plaintiff while he mentioned the advances in his written statement in that suit did not claim a set off under O 8 R 1 C P Code but instituted a cross suit

Held that though the plaintiff could have claimed a set off under O 8 R 6 C P Code in the defendants' suit his filing a cross suit was not illegal in the two claims were not essentially of the same nature and he was not obliged on pain of losing his advances to claim a set off in the rent suit (*James J*) BUDHANATH
D. TTA v KANHAI LAL MARWARI
179 IC 828-5 BE 296-
11 RP 412-AIR 1939 Pat 254

C. P. CODE (1908), O. 8, R. 6.

—O. 8 R. 6—*Time-barred claim—If can be pleaded by way of set off*

Set off is a creature of statute and is governed by O. 8, R. 6 C. P. Code although the latter part of the rule indicates that there may be a set off other than that provided by the rule. Under this rule, a claim barred by the law of limitation cannot be pleaded by the defendant by way of set off. The fact that the transac-

—O. 9, Rr 2 and 4—*Power of Court—Dile not fixed for appearance of defendant—Order requiring plaintiff to file process fees and copies of plaint—Non-compliance—Dismissal of suit—Legality.*

A Court has no power to require a plaintiff to file process fees or copies of the plaint before fixing a date for the appearance of the defendant. Such an order is illegal and failure to comply with it does not entail dismissal of the suit. A dismissal of the suit for failure to comply with such an order is without jurisdiction (*Jmes, J*) *SKIPATI SAKAN PRASAD SINGH v IN DARJIT MAHTON* 179 IC 563=5 BE 264=11 RP. 397 (1)=19 Pat LT 254=

dures, unless such are imperative or there is contumacious obstruction or deliberate delay with a view deliberately to lengthen proceedings. The dismissal of suits without considering whether payment of costs will not meet the situation so far as the opposite party is concerned must be deprecated (*Slip Si*) *RANJAN v. MAHOMED AKBAR*.

—O. 9, R. 6—*Ex parte suit*
case—Necessity

Ex parte suit is as much a judicial proceeding as a contested suit. Plaintiff has to prove his case by evidence and it is this cannot be (*Normin*) *S DAYAL*.

—O. 9, R.

penal provisions to appear afterwards and file written statement and take part in trial—Suit not past the stage of framing of issues—Powers of Court.

The object of Rr 6 and 7 of O. 9, C. P. Code, will be frustrated if defendants could be allowed to absent themselves with impunity at the earlier stages of a litigation. But where, by reason of causes for which none of the parties is responsible, the case has not made much progress, there is no reason why these rules should be applied as penal provisions depriving parties of the opportunity of putting forward their defence. It will not, in any sense, be reopening what has happened in the past if a defendant who has been declared *ex parte* should be permitted to file a written statement, when the as-

filed then but no of the or issues. In such a case a defendant who has been declared *ex parte* is entitled to file a written statement and proceed with the trial by cross examining the plaintiff's witnesses and also by leading evidence on his own

C. P. CODE (1908), O. 9, R. 1

behalf. In the absence of a statutory restriction in the Code corresponding to O. 6, R. 2 of the High Court Original Side Rules, mofussil Courts cannot impose any restriction on a defendant set *ex parte* continuing the suit at the stage at which it stands when he appears so long as he does not thereby reopen anything that has been done already (*Varachariar J*) *PERUMAL NAICKEN v. KONDAMA NAICKEN*

1930 M W N 110=49 L W 372=

A IR 1939 Mad 385 (1939) 1 M L J 61.

—O. 9, R. 8 and O. 17, R. 2—*Exercise of powers under—Respective stages*

Courts should not lightly dispose of litigation without going into the merits. It is also equally plain that Courts are bound in certain circumstances to dismiss cases for default. One case is that indicated in O. 9, R. 8. It is true that when a case reaches the stage where the issue stage has in part been passed, the Court is not compelled to exercise its powers under O. 9, R. 8 but is given power to make another order under O. 17 R. 2, and in any doubtful case the Court should so act (*Stone, C J. and Bose, J*) *MAVEKAL BHINRAJ v. PHULABAI* I L R. (1939) Nag. 574=184 IC 102=12 R. N. 93=

1939 N L J 351=A IR 1939 Nag 213.

—O. 9, R. 9—*Applicability—Faster app. reason—Duty of Court to decide on merits*

O. 9, R. 9, C. P. Code, is applicable to suits under

merely because there is an alternative remedy (*Wadsworth, J*) *KRISHNA RAO v JANAKI AMMAL*

1939 M W N. 408=49 L W 543=

A IR 1939 Mad 681=(1939) 1 M L J 728

—O. 9, R. 9—*Andersholm—Proceedence under*

RAM DAYAL BABU LAL v. LAKHU SAO.

1939 P W N. 699=20 Pat L T. 768.

50 L W. 430.

—O. 9 R. 9—*Sufficient cause—Minority of plain-*

tiff—Dismissal, if to be set aside on that sole ground

The fact of minority of a plaintiff is not by itself a sufficient cause for setting aside any order of dismissal that may be passed owing to the absence of the next friend, irrespective of the reasons for such absence. There is nothing in the C. P. Code to warrant a distinction in the procedure to be followed where the suit is filed on behalf of a minor. The question of what is sufficient cause within the meaning of O. 9 R. 9, C. P. Code, has to be decided with reference to various circumstances and the fact of the minority of the plaintiff is only one of such circumstances to be taken note of.

—O. 9 R. 13 has no application to execution proceedings, but only to decrees in suits or in proceedings in administration or guardianship of property.

C P CODE (1908), O 9, R 13

(P C), Rel on (*Baguley and Mosely, J J*) U P O MYA v FATHER RIOUFREY

1939 Rang L R 134=181 I C 841=11 R R 498= A I R 1939 Rang 115

—O 9, R 13—Applicability—Ex parte final decree for fore closure—Power to set aside

Where a final decree for foreclosure is passed in the absence of the defendant, it is an *ex parte* decree and as such the provisions of O 9, R 13 apply to it. A Court has jurisdiction to set it aside if the conditions necessary are proved. (*Baguley and Mosely, J J*)

1939 A

A I R 1939 Oudh 111
—O 9, R 13 (Oudh)—Due service—Power of appellate Court to go into question of

Due service is not the same thing as personal service. It has to be decided with reference to the provisions of the C P Code bearing on the point. It is not beyond the jurisdiction of an appellate Court to go into the merits of the question whether an order of substituted service was correct or not. (*Rashtia Krishna J*) ASHIQUE HUSAIN v LACHMI NARAIN

184 I C 884=1939 O L R 685=1939 O W N 950=1939 O A 766=1939 A W R (C) 40

—O 9 R 13—
aside within time—
for not having been p

Where an application to set aside an *ex parte* decree is made within the time allowed by law and accompanied by an affidavit the accuracy of statements in which is not questioned it cannot be rejected on the ground that it should have been put in earlier. (*Marsh S M and Mehta, J M*) RADHEY SHAM v SATISH CHANDER
1939 R D 525=1939 A W R (B R) 225

—O 9 R 13—Ex parte decree—Payment of punitive costs as condition precedent to restoration order for—Propriety—Procedure to be followed

Where an application for restoration of a suit after setting aside an *ex parte* decree is made on the next day the Court ought not to make the payment of punitive costs by way of condition precedent to the restoration.

1939 A W R (B R) 84 (2)
—O 9, R 13—Limitation—Application to set aside *ex parte* decree, beyond time

Where an application to set aside an *ex parte* decree is made beyond the time fixed, it has to be dismissed as time barred. (*Marsh, S M and Mehta, J M*) TIKA RAM v SOBARAM
1939 A W R (B R) 215

—O 9 R 13—Prevented by
from appearing—Meaning of

The words 'prevented by any sufficient cause from appearing' in O 9, R 13 C P Code, mean causes other than lack of knowledge of the proceedings. (*Mya Bu and Mosely, J J*) K K N K A R CHETTYAR FIRM v AGA ME SHEERAZEE

1939 Rang L R 606=A I R 1939 Rang 436
—O 9 R 13—Substituted service—If due service
See LIMITATION ACT, ART 164 1939 Rang L R 606

—O 13 R 1 and 2—Filing
Stage—Special hearing or watch sabut

The practice of giving a hearing sabut i.e., a hearing specially fixed to

O P CODE (1908), O 17, R 2

documents that may be required is nowhere warranted by any of the provisions of the C P Code Rr 1 and 2 of O 13 C P Code, clearly prescribe the procedure to be followed in the filing of the documents. (*Davies I. C S*) MANNING v DHIRAJ LAL

1938 A M L J 120.
—O 13, R 2—Document to prove fraud produced at late stage—Admissibility

A trial Court cannot base its decision on an allegation of fraud never set up by the defendants in their written issue and based on documents put for in cross examination of the plaintiff's. It can be disregarded by the appellate Court if not admitted by the trial Court without reasons. (*Baguley and Mosely J J*) KHARWAR v MOTIWALA

1939 Rang L R 18=181 I C 792=11 R R 489=A I R 1939 Rang 98
—O 14, R 1—Failure to frame issue—If can be condoned

The word 'shall' in cls (3) and (5) of O 14 R 1 does not leave any discretion to the Court and makes it mandatory that every proposition affirmed by one party and denied by the other, whether of fact or of law, should be made the subject matter of an issue. Even if substantial justice is done the failure to frame an issue should not be overlooked because an act which is obli-

184 I C 433=12 R Pesh 26= A I R 1939 Pesh 44

—O 16 R 17—Applicability—Witness orally directed to attend Court on future date—Absence of definite order in writing directing him to attend—Witness not appearing on date—Proceedings under O 16 R 17—If justified

Unless it can be clearly held that a witness was expressly directed to re attend the Court on a particular date and that he understood that he was so required by the Court and that he in spite of it failed to re attend as required, he cannot be liable to be dealt with under O 16 R 17, C P Code. In the absence of any definite order of the Court borne out by the record

such direction requiring re attendance on the part of the witness is not ordered to attend, it is a proceeding under O 16 R 17 to attend. (*Mohammad vvor and Dastgir, J J*) AVADH BEHARI SARAN v S K P SINHA

180 I C 102=5 B R 337=11 R P 451=A I R 1939 Pat 285

—O 17, R 1—Illness of counsel—Refusal of adjournment—Prejudice

Where the counsel of a plaintiff was admittedly ill on the date fixed for the hearing of a case and it was proved that he was not fit to get ready on short notice, to adjourn such a case was not a refusal to attend. (*Mohammad vvor and Dastgir, J J*) BHUREY SINGH v B B AND C I RV

1939 A M L J 118.

—O 17, Rr 2 and 3—Applicability—Suit adjourned for plaintiff's witnesses—Plaintiff's advocate absent on adjourned date—Application for adjournment by another advocate refused—Plaintiff not giving evidence—Dismissal of suit—If one under R 2 or R 3—Restoration under O 9 R 9—Competency

C P CODE (1908), O. 17 R. 2

jourment, which being refused, he took no further part in the proceedings, as he was not instructed to conduct the suit. The plaintiff also not giving evidence, the suit was dismissed. The suit was subsequently restored on an application under O. 9, R. 9, C. P. Code.

Held, that the case fell under O. 9, R. 9 as the mere physical presence of the plaintiff could not take it out of O. 9, R. 9, as it was not an appearance under O. 17, R. 3 so as to preclude an application for restoration. The disposal must be held to fall under O. 17, R. 2, C. P. Code (*Samsaya, J.*)

v. SUBRAMANYAM.

1939 M.W.N. 951 =

O. 17, R. 2—Order un-

If an order is made under O. 9, R. 8, then it is as though O. 9, R. 8 and is not appealable and *Cost, J.* MANEKLAL BHIMRAJ *v.* PHULABAI. I.L.R. (1939) Nag 574 = 184 I.C. 102 = 12 B.N. 93 = 1939 N.L.J. 351 = A.I.R. 1939 Nag 213

O. 17, R. 3

ability—Time gran-

Failure to appear—

Where at the instance of both parties time was extended for the final hearing and on the adjourned date the

Nor does the fact that time was granted to both parties make the rule inapplicable. (*Bennet and Verma, J.J.*) NARAIN DAS *v.* MADAN MOHAN.

183 I.C. 703 = 12 E.A. 161 (2) = 1939 A.L.J. 371 =

1939 A.W.R. (H.C.) 318 = A.I.R. 1939 All 524.

O. 17, R. 3—Scope—Decision of suit under—

Restoration under O. 9, R. 13 if possible.

R. 3 of O. 17, C. P. Code means that the Court has discretion either to decide the case that day or not, but if it does decide the suit, it will be a decision on the merits and appearance on behalf of the defendant would be assumed, whether he was in fact present or not and the decree passed cannot be regarded as *ex parte* decree so

as to the defendant in such case restoration is not

possible. (*See also* *Maneklal Bhimraj v. Phulabai*)

points arising from inspection—v. duty.

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points arising from inspection—v. duty.

C P CODE (1908), O. 20, R. 18.

the affidavits. (*Burn, J.*) NARAYANA *v.* LAKSH MAYYA. 1939 M.W.N. 735 (1) = 50 L.W. 654 =

A.I.R. 1939 Mad. 927 = (1939) 2 M.L.J. 399.

O. 20, R. 3—*Judgment setting aside ex parte small cause decrees, delivered and signed—Finding that claim in that suit not proved to be true—Subsequent order restoring that suit to file for trial on merits—If without jurisdiction*

Where in a suit to set aside an *ex parte* decree passed in a Small Causes Court suit, the Court delivers and

restores the suit to file for trial on merits, it is not

without jurisdiction. (*See also* *Maneklal Bhimraj v. Phulabai*)

points arising from inspection—v. duty.

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points arising from inspection—v. duty.

C P CODE (1908), O 20 R 18

Mitter and Abram JJ) **RANADA KISHORE ROY v SWARNAMOYEE DEBI**
70 C L J 355 =
44 C W N 114

—O 20 R 18 (1)—*Limitation—Partition of land assigned to Government revenue—Order decreeing partition and directing Collector to carry out division and to put parties in possession—Application by parties to send papers to Collector—If one in execution—Limitation*

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dir
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duty to the Court directed and it is for the Collector to partition the property and put the parties into possession. The Court would send the papers to the Collector without being asked. But if as a matter of practice the parties ask the Court to send the papers to the Collector in the form of an ordinary dakhast that is not an application in execution at all for there is nothing in a case of this sort for the Court to execute. Asking the Court to send the papers to the Collector is really asking the Judge to do a ministerial act. There is no article of the Limitation Act relating to an application of that sort and Art 182 of the Limitation Act does not apply to such an application. (*Beaumont C J and Wadia J*) **JACINTO v FERNANDEZ**

41 Bom L R 921 A I R 1939 Bom 454

—O 21—*Attachment—Formalities*

O 21 C P Code is a very formal matter, and no property can be declared to be attached until all the formalities prescribed by the Code and the rules are complied with. (*Mo Kett J*) **BALUSAMI v OFFICIAL ASSIGNEE OF MADRAS**
1939 M W N 573 =

A I R 1939 Mad 811

—O 21 R 1—*Payment to Court—Decree holder if entitled to set rest up to date of notice of payment*

Where a decree awards interest till date of payment and the judgment debtor pays the decree amount into Court interest ceases to run from that date and the decree holder cannot claim interest up to the date of the notice to him under O 21 R 1 (2) C P Code. (*Stone C J and Bose J*) **SETH LAXMINARAYAN v SETH GHASIRAM**
183 IC 256 = 1939 N L J 211 =

A I R 1939 Nag 191

—O 21 R 2 and S 47—*Adjustment—Executory contract—Compromise not an adjustment—Remedy of decree holder—Execution or separate suit*

An executory contract is not an adjustment within the meaning of O 21 R 2 C P Code and cannot be pleaded as a bar in execution. A compromise which is not an adjustment within the meaning of O 21 R 2 C P Code clearly does not extinguish the original decree, since it can be executed in spite of the compromise. Hence barred by S 47,
NATAN LAL

—O 21 R 1

before sale—Application to be recorded after sale. See C P CODE, O 21 R 92 AND 2. 41 P L R 220

—O 21 R 2—*Agreement relating to time and manner of enforcement of decree—If can be recorded*

An agreement intended to govern the liability of the debtor under the decree and to have effect upon the time

C P CODE (1908), O 21 R 2

and manner of its enforcement is a matter to be dealt with under S 47, C P. Code, and can be properly recorded by the Court. 43 C W N 501 (P C) Rel on (*Mitter and Rau JJ*) **PATIL KUMARI v NIRMAL KUMAR**
70 C L J 5 = 43 C W N 907 =

A I R 1939 Cal 569

—O 21, R 2—*Applicability—Preliminary decree under O 34, A 4*

A preliminary decree passed in a mortgage suit for

—O 21, R 2—*Certification—Statement of decree holder in reply to judgment debtor's application under O 21 R 2 (2)—If amounts to certification*

Where a judgment debtor applies under O 21 R 2 (2) for recording of certain payments and the decree holder in reply files a statement that certain sums of money were received but that they were paid on account of interest not allowed by the decree but agreed to be paid in consequence of a separate agreement entered into after the passing of the decree it cannot be an admission that the payments were in satisfaction of the money due under the decree and cannot therefore amount to a certification. (*Venma J*) **ABID HUSAIN v KUNJ BEHARI LAL** 184 IC 668 =
1939 A W R (H C) 635 = A I R 1939 All 581

—O 21 R 2—*Scope—Adjustment between judgment debtor and third party—If can be recognised—Plea that decree-holder is one other than the one named in the decree as such—If open to judgment debtor*

It is not open to a judgment debtor in execution proceedings to aver that the real holder of the decree is some one other than the person named as the decree holder in the decree, unless there has been an assignment or devolution by process of law and under O 21, R 2 C P Code he can only claim entry of satisfaction of the decree when payment has been made either to the decree holder or to some other person definitely held out by the decree holder as his agent for the purpose of payment.

Kauland, J—An adjustment to which the decree

—O 21, R 2—*Scope of—Preliminary decree for sale on mortgage—Adjustment with reference to—If can be recorded under O 21 R 2—Provision of law applicable*

O 21, R 2, C P Code, is confined in its operation to decrees that are capable of execution. Where an alleged adjustment relates only to a preliminary decree for sale on a mortgage in which no final decree for sale had yet been passed it could not be recorded by

NIWAS v PAM DAYAL 180 IC 214 = 11 RA 435 =
1938 A W R (H C) 859 = 1938 A L J 1231 =
A I R 1939 Al 174

—O 21, R 2—*Uncertified payment—Double payment to avoid execution—Suit for damages—Maintainability*

C. P. CODE (1908), O. 21, R. 2

Where a decree holder executes his decree, notwithstanding the payment of the decree amount by the judgment debtor, and the latter pays the amount once over to avoid the sale of his property, he can maintain a separate suit against the decree holder to recover damages for breach of contract represented by the ad-

loss incurred by the payment twice over in respect of the same liability (*Manohar Lall, J.*) RAM DAS SAHU v. SUKHDEO RAM 178 I.C. 196 = 5 B.R. 71 = 11 R.P. 228 = A.I.R. 1939 Pat. 156

—O. 21, R. 2—Uncertified payments—Suit for recovery—Cause of action, when arises

Where, on a failure to get all the payments alleged to have been made by a judgment-debtor to the decree-holder certified, the judgment-debtor files a suit against the decree holder for the recovery of such of the payments not certified, he has no cause of action and his suit is premature. It is in substance a suit for damages

(*Mulla, J.*) JAGDEO DUBE v. DEOKI NATH TEWARI. 183 I.C. 450 = 12 R.A. 142 = 1939 A.W.R. (H.C.) 402 = 1939 A.L.J. 403 = A.I.R. 1939 Al

—O. 21, R. 2 (3)—Scope—Maintenance charging properties—Execution against one property—

not set aside and its setting aside—Maintainability.

The respondent, a Hindu widow, got decree on 27.9.1932 charging her male properties of the members of the joint family of those properties was put up for sale money decree obtained by the appellant joint family and was purchased by himself the sale being confirmed on 24.8.1933 in execution of her decree put up for sale one item of family property, other than that purchased by the appellant, and purchased it herself. The sale was confirmed and she got possession on 12.11.1933. The sale was, however, set aside on 30.6.1934, when she lost possession. In a subsequent execution, the respondent sought to enforce her charge again—purchased by the appellant, and the respondent decree holder, in the sale and its setting aside, was enjoined the property which was more than

C. P. CODE (1908), O. 21, R. 16.

—O. 21, R. 5 and 8—Applicability and scope—Decree—Transfer to another Court for execution—Order of transfer when takes effect—Transfer to District Court for transmission to Court of execution or transfer to District Court for execution—Distinction Rr. 5 and 8 of O. 21, C. P. Code, are distinct and

execution, but for transmission to a Subordinate Court for execution, the District Court cannot execute decree. In such cases, the order of transfer takes effect from the date on which the order for transfer is made. (*Burn and Stodart, J.J.*) VENKATARAMAIAH v. CHINNAPPA 50 L.W. 764.

—O. 21, R. 6—Order under S. 39, allowing simultaneous execution in two Courts—Notice to judgment-debtor—Necessity. See C. P. CODE, S. 47.

41 Bom L.R. 481.
—O. 21, R. 11—Applicability—Decree for payment of money—Proceedings between husband and wife under Guardians and Wards Act for custody of minor children—tenance and school authorities—Fiduciaries—GUARDIANS AND 41 Bom L.R. 625.

When may be furnished
Particulars of interest due are not required by O. 21,

is taken or before of ascertaining the (*J.J.*) P. L. S. P

R. 1939 Rang. 345.
—O. 21, R. 15—Partition decree—Execution

—O. 21, R. 15—Scope—Non-compliance with—If fatal—Several decree-holders—Execution application by one only—Omission to mention existence of others—Effect—Applicant acting honestly—Power of Court to direct amendment.

1939 M.W.N. 9 = A.I.R. 1939 Mad. 278 = (1939) 1 M.L.J. 39.

—O. 21, R. 16—Applicability—Decree obtained by

file

C P CODE (1908), O 21, R 16

the decree without recognition by the Court which passed the decree on the devolution upon them of the decree. The decree is, on their father's death transferred to them by operation of law, and O 21, R 16, C

Court—Procedure—Right of legal representative to continue proceedings in transferee Court—Necessity for application to Court which passed decree under O 21, R 16

A legal representative of a deceased decree holder is deemed a transferee of the decree by operation of law, and as such is entitled to apply for the execution of the decree to the Court which passed the decree, under O 21, R 16 C P Code. The transferee of a decree or the heir of a decree holder cannot present an application for its execution unless he first obtains an order under O 21, R 16 that he is the person entitled to execute the decree as the representative of the original may be. Where a decree execution to another Court before starting the execution by his legal representative cannot in the Court to which the decree has to start fresh proceed passed the decree under O 21, R 16 from the Court which passed the decree and have that order remitted to the Court to which the decree has been transferred for execution under O 21, R 16 (c) If the application under O 21 R 16 is granted by the Court

execution by being time barred then the legal representative is not entitled to have an order passed in his favour under O 21, R 16 (*Lokur J*) BRIJMOHAN DAS DANODARDAS v SADASHIV LAXMAN

41 Bom LR 1190

—O 21 R 16—Assignment—Validity of—Right of judgment debtor to question—Decree in favour of minor a Court

—O
of—Who
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in writing as contemplated by O 21 R 16, C P Code. There is no provision in law prescribing a particular form of such an assignment. Some written authority proceeding from the transferor of the decree is sufficient

C P CODE (1908) O. 21, R 16

for the Court to take action on the application of the transferee (*Wassoodew and Sen, JJ*) ASUNDI v VIRAPPA ANDANEPPA ILB (1939) Bom 271= 182 IC 779=12 RB 44=41 Bom LR 371= AIR 1939 Bom 221.

—O 21, R 16—Construction—'Court which passed the decree'—Award under Co operative Societies Act—Execution by Civil Court—Assignment—Power of

Societies Act has been transmitted for execution has jurisdiction to recognise an assignment of the award under O 21, R 16 C P Code (*Wadsworth, J*) KANNAPPA MUDALI v VARADACHARIAR

1939 M WN 986=50 LW 507= (1939) 2 MLJ 596

—O 21, R 16—Construction—'Transfer by operation of law'—Assignment in writing 'if included—Holder of decree declaring title to another decree passed previously—If transferee by operation of law' The phrase transfer by operation of law in O 21, R 16, C P Code, should receive a restrictive interpretation

a party to a decree passed previously cannot be regarded as sufficient to effect a transfer by operation of law of the right to execute the decree within the meaning of O 21, R 16, nor does it *ipso facto* constitute an assignment. At best it creates a right to obtain an assignment and realization of the

A person who
nment of a decree
erable thereunder
w' (*Wassoodew*)

—O 21, R 16—Non service of notice—Assignors and judgment debtor waiving right—Validity of execution sale

The notices to which reference is made in O 21, R 16, C P Code are merely for the benefit of the transferors and the judgment debtors and it was appa

assignment and raise no proceedings are con technical requirements r a sale a nullity which execution proceedings in 16 had not been served v BAIKUNTHA NATH 743=182 IC 980= AIR 1939 Cal 419

—O 21 R 16—According to assignment of decree—Application for—Maintainability

There is no justification for reading into O 21 R 16, C P. Code, provision for anything more than a single

C. P. CODE (1908), O. 21, R. 16.

application for execution by a transferee of a decree. An application by him for merely recording the assignment of the decree is therefore not competent. (*Sen, J.*) RADHA NATH DAS v. PRODUMNA KUMAR SARKAR. I L R (1939) 2 Cal 325

—O 21, R. 16—*Right of assignor—Right to execute.*

There is no authority for the proposition that from

payment of money—If includes mortgage decree for sale.

The phrase "decree for the payment of money" occurring in the second proviso to O 21, R. 16 does not include a decree for sale passed in a mortgage suit.

—O 21, Rr 18 and 19—*Set off of claims—Inherent jurisdiction of Court.*

Apart from the provisions of Rr. 18 and 19 of O 21, the Court has inherent jurisdiction to allow set off of the claims arising at different stages in the same suit or proceeding even if the right to recover the claim sought to be set-off is barred by limitation. (*Bhude, J.*) BADRI NATH MEHRA v. MOTI RAM MEHRA.

183 I.O. 61—12 B.L. 94—41 P.L.R. 385—A.I.E. 1939 Lah 85

—O 21, R. 19 (b)—*Applicability—Pre-emption decrees.* See PRE-EMPTION—DECREE FOR.

1939 A.L.J. 48.

—O 21, R. 22—*Omission to issue notice or to record reasons—Irregularity—Notice issued under R. 66—Effect of.*

Ordinarily, the failure to issue a notice under O 21, R. 22, C. P. Code, or to record reasons for not issuing such notice would be fatal, and a sale concluded in such circumstances would be void. But where notice of the execution proceedings and sale thereunder is issued under O 21, R. 66 and the judgment debtor appears and contests these proceedings, it is unnecessary to give the

C. P. CODE (1908), O. 21, R. 41.

—O 21, R. 24 (2)—*Warrant without seal of Court—Validity.* See PENAL CODE, S 225 B.

1939 Rang L R 445.

—O 21, Rr. 30 and 21—*Decree for money—Warrant of arrest—Right of decree holder*

The discretion given to the Court by O 21, R. 21, C. P. Code, to refuse simultaneous execution against the person and the property does not extend to compelling the

—O 21, Rr. 30 and 64—*Scope and effect of—Power of Court to sell without attachment* See EXECUTION SALE. 41 Bom L R 463.

—O 21, R. 32—*Restitution of conjugal rights—*

as amended, a
can be enforced
by imprisonment.
) KHATUNI v.
R J. and K. 80.
session of land—

in possession of land
such possession includes the standing crops. The judgment-debtor cannot re-enter in order to reap and dispose of the crops which he had cultivated upon the land. (*Mysa Bu, J.*) MAUNG KAN v. MAUNG PO TOK. A.I.E. 1939 Rang. 388.

—O 21, R. 35 (2)—*Decree for joint possession—Nature—Effect of—Actual physical possession—How obtainable.*

A decree for joint possession can be executed only in the mode prescribed by O 21, R. 35 (2), C. P. Code. Such possession cannot be actual physical possession. Nor can such a decree entitle one to take actual physical possession to the ouster of the persons in actual possession of the plot in dispute. If such a decree holder wishes to obtain actual physical possession he has to bring a suit for partition. (*Mulla, J.*) JAINTI PRASAD v. SHEO SAHAL. 1939 A.W.R. (H.C.) 311—1939 A.L.J. 375—1939 R.D. 264.

—O 21, Rr. 41 and 42—*Applicability—Decree directing inquiry into damages—Application for an order for examination of judgment debtor—Competency.*

A decree directing an inquiry as to damages is a decree

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ramana Rao J.) UNITED MOTOR FINANCE CO. v. FIAT MOTORS EASTERN INDIA AGENCY.

49 L.W. 696—1939 M.W.N. 627—

A.I.E. 1939 Mad. 699—(1939) 2 M.L.J. 80.

judgment. A Nazir can, therefore, delegate the execution of the process to his subordinates. (*Tak Chand and Dalip Singh, JJ.*) PILADA RAM v. TULSI DAS ASA NAND. 41 P.L.R. 838.

C. P. CODE (1908), O. 21, R. 46

—O 21, R. 46—"Debt"—Dividend payable in insolvency to creditor not yet declared—If attachable.

C. P. CODE (1908), O. 21, R. 53.

as an order under O 21, R. 50 (2) may be passed only by the Court which passed the decree. (*Davis, J.C.*)

I L R (1939) 1 Cal 523 = 183 I C 818 =
12 R C 196 = 69 C L J 267 = 43 C W N 512 =
A I R 1939 Cal. 428

—O 21 R 46—Jurisdiction—Prohibitory order to garnishee residing beyond jurisdiction—Power of Court to issue

A Court is not competent, in execution of a decree for money, to attach the property of the decree holder's debt payable to a person by a person that Court to a garnishee.

(*Mockett, J.*) BALUSAMI v OFFICIAL ASSIGNEE OF MADRAS 1939 M W N 573 = A I R 1939 Mad 811

—O 21, R. 46 (1) (a) and (c)—Applicability—Deposit by member of East India Cotton Association to the Association under the Rules—Attachability.

A deposit made by a member of the East India Cotton Association with that Association under their rules is not liable to attachment in execution of a decree against the depositor.

J. and Rangnagar, J) GAJROJ
HUKAMCHAND

I L R (1939) Bom 109 =
180 I C 360 = 11 R B 296 = 41 Bom L R 19 =
A I R 1939 Bom 90.

—O 21, R. 48 and 46—Salary of M L A—

firm and persons with whom the firm had dealings, to arbitration (*Pantridge, J.*) TOLARAM NATH MULL, In re

I L R (1939) 2 Cal 312 =
43 C W N. 997

—O. 21 R. 52, Provision—Right of suit—If barred.

Any decision in a proceeding under O 21, R. 52, decree holder and a person under s. 47, C. P. Code, could not be barred.

) KANJI VALJI v.
182 I C 860 =
12 R C 104 (2) = 69 C L J 108 =
A I R 1939 Cal 413

—O 21, R. 53—Attachment before judgment of decree held by defendant—Decree passed in suit—Effect of—Rights of attaching decree-holder.

Per Nazim Ali J.—Where a plaintiff in a suit attaches before judgment a decree that the defendant

against the defendant and attaches the decree which the defendant had obtained against another he becomes entitled to all the rights which are given to the attaching decree-holder under O 21, R. 53 C. P. Code. Any

C. P. CODE (1908), O. 21, R. 53.

Any subsequent dismissal for default of the previous execution case on account of any default of the decree-holder in connection with matters left outstanding in those execution proceedings after the attachment of the decree could not be regarded as an obstacle to prevent the decree-holder from executing that decree in a subsequent execution proceeding properly instituted for the purpose under O. 21, R. 53 of the Code. (*Edgley, J.*) SATISH CHANDRA v. BIRESWAR SUR.

A.I.R. 1939 Cal. 465

—O. 21, R. 53—Notice to judgment debtor and decree-holder if necessary to make attachment effective.

When a decree-holder seeks to execute his decree by attachment of another decree, in ment may be effective notices to judgment debtor of the attached and the mere order communicating ment to the Court passing the (*Vishan Bose, J.*) GOWARDHAN v. HARGOVIND

180 I.C. 305=11 B.N. 353=1939 N.L.J. 73=

A.I.R. 1939 Nag. 17.

—O. 21, R. 53 (1) (b)—Notice not issued to Court which passed decree sought to be attached—Validity of attachment.

The provisions of O. 21, R. 53 (1) (b), C. P. Code, are mandatory. The only manner in which a decree is to be attached is by issuing a notice by the Court which passed the decree sought to be executed to the Court, which passed the decree sought to be attached and further if the latter decree had been transferred for execution to another Court, by a further notice to that Court. If such notices are not issued, there is no legal attachment, and the holder of the decree sought to be executed does not become the representative of the holder of the decree sought to be attached and he cannot therefore, execute the same (*Mitter and Khundkar J.J.*) ANIL KUMAR v. JUGAL KISHORE.

43 C.W.N. 374.

—O. 21, R. 53 (4)—Applicability—Partnership—Decree for dissolution and accounts—Attachment—Mode of. See C. P. CODE, S. 60. 18 Pat. 688.

—O. 21, R. 53 (6)—Notice not issued to judgment debtor—Adjustment between him and his decree-holder—Validity

If no notice under O. 21, R. 53 (6) C. P. Code is

C. P. CODE (1908), O. 21, R. 55.

constitute a valid attachment. (*Burn, J.*) NOOR MAHOMED MOHIDEEN PILLAI v. PECHI ANMAL.

50 L.W. 656=1939 M.W.N. 783=

A.I.R. 1939 Mad. 793=(1939) 2 M.L.J. 375.

—O. 21, R. 54 and 90—Failure to affix copy of proclamation at Court house—Material irregularity.

Failure to affix a copy of the sale proclamation at the Court-house of the execution Judge amounts to irregularity of a material character as described in O. 21, R. 90. (*Mir Ahmad, J.*) BUNDHELKHAND CYCLE AND MOTOR AGENCY v. PEOPLE'S BANK OF NORTHERN INDIA, LTD. 181 I.C. 542=11 B. Pesh. 70=

A.I.R. 1939 Pesh. 9.

an application made for attachment of property situate within its jurisdiction. (*Baguley, J.*) U MAUNG MAUNG v. SAHUL HAMID. 1939 Rang L.R. 587=

A.I.R. 1939 Rang. 433.

—O. 21, R. 54—Order of attachment—Compliance with formalities—Presumption, when process-server's report is available. See EVIDENCE ACT, S. 114, ILL. (c). 41 P.L.R. 149.

—O. 21, R. 54—Personal service of prohibitory order on judgment debtor—Necessity for.

Under O. 21, R. 54, C. P. Code, personal service of the prohibitory order on the judgment debtor is not necessary. (*Robert, C.J., Mya Bu and Mosty, J.J.*) S. T. R. M. CHETTYAR FIRM v. ANDATHAL.

1939 Rang L.R. 594=

A.I.R. 1939 Rang. 434 (S.B.).

—O. 21, R. 54 (2)—Non-affixing of order on Court-house—Validity of attachment.

There is no valid attachment if a copy of the order is not affixed on the Court-house as required by O. 21, R. 54, C. P. Code. (*Bhidi, J.*) MAIDATT MANAK CHAND v. MST. LACHHO. 41 P.L.R. 149=

A.I.R. 1939 Lah. 284.

—O. 21, R. 54 (3) (Allahabad)—Construction—'Date', meaning of—Priority as between sale and

"Date" means the date of the order for attachment.

and the attachment of the same property take place on the same date, there is no statutory provision for priority as between the two. As such, rules of justice, equity and good conscience must be followed. S. 5 (3) of the General Clauses Act cannot be applied to such a case. That deals with the Acts of the Governor General in Council and lays down that unless the contrary is expressed such Acts shall be construed as coming into operation immediately on the expiration of the day

fixed for the commencement. That is a word of

A.I.R. 1939 All. 154.
—Scope—If subject to S. 73—Particular decree debt—Liability See C. P. CODE, S. 73. 1939 P.W.N. 242.

of the order affixed on a conspicuous part of the property, of the Court house of the district. the Court, and 'attach' and for

C P CODE (1908) O 21 R 55

—O 21 R 55 (a)—Construction—Duty to avoid conflict with S 73—Attachment when to be deemed to be withdrawn

O 21 R 55(a) C P Code should be read in such a way that it does not conflict with S 73 C P Code Attachment shall be deemed to be withdrawn on payment under O 21 R 55(a) only when the decree has been satisfied and the decree can be satisfied only if the amount deposited is available to the decree holder in full satisfaction of the decree This result cannot ensue in cases falling under S 73 which are imperative The law intervenes in such a case and directs that although the full amount is intended to be paid to the particular decree holder whose attachment is sought to be got rid of it has to be diverted by reason of S 73 (*Faiz Ali and Manohar Lal JJ*) SATNARAIN

—O 21 R 57—Applicability—Default of decree holder—Attachment—Subsequent insolvency of judgment debtor—Order dismissing execution petition—If terminates attachment—Subsequent annulment of

cannot be said that there will be no attachment if and when the adjudication is annulled
ing Court on being informed of the
ously passes an order dismissing the
then pending instead of staying th
should under S 29 of the Provincial Insolvency Act it cannot be said that the order of dismissal is an order of dismissal for default of the decree holder with n the meaning of O 21 R 57 C P Code so as to have the effect of automatically terminating the attachment In
a case where there has been an attachment at the

C P CODE (1908), O 21, R 58

—O 21 R. 58—Application under—If can be made after sale

Attachment must be deemed to continue until the sale is confirmed and so till then an objection to the attachment could be made under O 21 R 58 even though the execution sale is over (*Grier J*) BABA RAMCHANDRA KOMTI v KONDOO JAGNA WADHAI 184 IC 797=1939 N L J 496

—O 21 R 58—Effect of order—Raising of attachment on claim by third party—Judgment debtor, if bound by order

Where on a claim by a third party that he is the owner of a property attached in execution of a decree against another the attachment is set aside on that ground the decision that the third party is the owner of the property is not binding as between the judgment debtor and the claimant No doubt if the judgment debtor had appeared and opposed the claim and the matter is decided the decision may be binding on him (*Allison J*) MAHOMED UMAR v ABDUL GHANI

1939 A W R (H C) 729 A I R 1939 A I L 728

—O 21 R 58—Jurisdiction—Sale held but not confirmed—Court's jurisdiction to hear claim petition—If lost

The fact that an execution sale of the atta had been

place would not shut out a claimant for ever from

—O 21 R 58—Locus standi to object—Attachment of share of member in Co-operative Society—Locus standi of Society

A Co-operative Society has an interest in the shares of a member as these shares form part of its capital Hence where these shares are attached by a person in
against the member the Society
to the attachment of these
when the Society is being made

person on ground of title acquired subsequent to attachment—Duty of executing Court

An objection to the sale of a property by a third person on the ground that subsequent to its attachment he has purchased it at an auction sale in execution of

—O 21 R 57—Construction
such application—Meaning of—Dis
locutory application in pending executi

Effect on attachment—Obtaining of
during continuance of prior attachment—If terminates
prior subsisting attachment

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shall cease
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CHETTIAR v RAJANGAM

1939 M L J 916

and it would be desirable to do so to prevent unnecessary

valid title
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not be sold
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C P Code

C. P. CODE (1909), O. 21, R. 58.

complications, which would otherwise result from a second sale. (*Shide, J.*) **PREM CHAND v. MULKH RAJ.** 41 P L R 305 = A I R 1939 Lab. 380.

—O. 21, Rr. 58, 60 and 63 and S. 115—*Objection under O. 21, R. 51—Duty of Court dealing with—If can go into question of title—Breach of R. 60, if a material irregularity liable to be rectified—Rectification, if excluded by R. 63.*

When an objection is raised under O. 21, R. 58, C. P. Code, the Court dealing with it has to concentrate its attention only to the question of possession and to decide whether the judgment debtor, is in possession of the property on his own behalf or on account of or in trust for some person. If the property is found to be in possession of somebody else, then it has to be decided whether it is the property of the judgment debtor. The Court's cor

decide it.

upon the finding on the question of possession.

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C. P. CODE (1908), O. 21, R. 62.

such investigation and that in no such case shall the sale become absolute until the claim or objection has been decided, obviously contemplates the decision of a claim after the sale. Sale can go on and confirmation can be stayed pending decision of claim or objections. (*Baspar, J.*) **TUNDI RAM SHEO SHANKER RAM v. GHURE** 1939 A.W.R. (H.C.) 485 = LAL.

1939 A.L.J. 622 = A I R. 1939 All. 698.
—O. 21, R. 62—*Applicability—Petition informing in umbrance and praying notification—Order of dismissal holding mortgage discharged—If should be set aside within a year.*

The question whether an order by the executing Court with reference to an attached property is conclusive unless set aside within a year or not depends upon the

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—O. 21, Rr. 58 and 63—*Onus—Father making gift of property to daughters—execution of decree against daughter dismissed—Suit by him under proof.*

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and Rowland, J.J.) **MT NAUROZI v. SHAH.** 184 I C. 508 = 6 B E. 63 = A I R.

—O. 21, R. 58—*Release from attachment—Subsequent decree of suit under O. 21, R. 63—If*

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—O. 21, R. 62—*Scope—Sale proclamation pending claim—Power of Court to issue.*

It is not competent to a Court to order the issue of a proclamation of sale while a claim petition is pending. (*Burn, J.*) **GOVINDARAJALU CHETTY v. RAMASWAMY CHETTY** 1939 M.W.N. 778 = 50 L.W. 338(1) = (1939) 2 M.L.J. 605.

—O. 21, R. 58 (2) (All)—*Claim—If can be investigated and heard after sale.*

The addition by the Allahabad High Court to sub-cl. (2) of R. 58 of O. 21, C. P. Code, to the effect, that the Court may in its discretion make an order postponing the delivery of the property after the sale pending

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(*Alumtist and Lalit Narayan, J.J.*) **AMELIA PROSAD SANYAL v. SOORAJMULL NAGARMULL.**

I.L.R. (1939) 2 Cal. 291 = 43 C.W.N. 999 = A I R. 1939 Cal. 620.

—O. 21, Rr. 62 and 66—*Construction—Subject to such mortgage, meaning of—Distinction between such a sale and one where notice of encumbrance is given in the proclamation—Right of auction purchaser to question mortgage.*

The expression 'subject to such mortgage' occurring in O. 21, R. 62, C. P. Code, means that what is sold is the equity of redemption. There is a distinction between an express order directing the property to be sold

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(*Alumtist and Lalit Narayan, J.J.*) **AMELIA PROSAD SANYAL v. SOORAJMULL NAGARMULL.**

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C P CODE (1908) O. 21, R. 63

'subject to a mortgage' and cases where notice of an alleged mortgage is given in the sale proclamation. While in the former case the would be purchaser is made aware of what exactly he is purchasing in the latter case he merely takes a chance of the mortgage being either not in force or enforceable. The price would vary considerably according as to whether a sale is subject to a mortgage or whether a mortgage is merely notified in the sale proclamation. An auction purchaser who is the decree holder cannot challenge the finding that a mortgage subsists when the sale is subject to a mortgage' (*Grille J*) SETH MISHRILAL OSWAL v BARIK JURSI KIRAR

I L R (1939) Nag 665=1939 N L J 487=
A I R 1939 Nag 305

—O 21 R 63—Burden of proof

In a suit under O 21 R 63 C P Code, the burden

claimant the judgment debtors his vendors, through whom he holds, are not necessary parties. They having parted with their interest in the property it matters not to them if the defendant or the plaintiff has it, but the rules of evidence which require a plaintiff to prove his claim are not abrogated in his favour because he brings a suit against a successful claimant. The plaintiff must

—O 21 R 63—Burden of proof—Suit by defeated claimant—Onus

Where in proceedings under O 21, R. 58 evidence is called and a person's claim to the attached property is rejected upon the merits the onus in a suit by him under O 21, R. 63 is upon him to show that he is the owner

—prosecution—Finality

In order to bring a case within R. 63, C P Code the question as to whether a claim was investigated or not is immaterial. Even if a claim is dismissed for non prosecution the claimant is bound to institute a suit under O 21, R. 63 failing which the order becomes conclusive and final (*Mukherjee and Latifur Rahman JJ*) AMBICA DOSE v SANYAL SOORAJMULL NAGARMULL

I L R (1939) 2 Cal 2

—O 21 R 63—Parties—S

ant—Execution sale pending suit—Purchaser—If

O 21, R. 63 making the decree holder and the judgment-debtors defendants. During the pendency of the

C P CODE (1908) O. 21, R. 63.

suit, the property was brought to sale in the execution proceedings and was purchased by a stranger who was not a party to the suit.

Held that the claimant was entitled to institute a suit under O 21 R 63 against the persons who had been parties to the case under O 21 R 58 and he was not obliged subsequently to implead the auction purchaser, (*James and Rowland, JJ*) MT NAUROZI v NAJAR ALI SHAH

184 I C 508=6 B E 53=

12 R P 248—A I R 1939 Pat 321

—O 21 R 63—Scope—Order allowing claim—Suit by decree holder more than 12 years after attachment—Maintainability—Discretion of Court to grant declaration of right to attach

A suit under O 21 R 63 C P. Code, is in form and substance a declaratory suit and it would be an unreasonable exercise of discretion by the Court to make

mischievous, as it may lead an unwary purchaser into thinking that he is buying a subsisting interest (*Vaadachariar, Lakshmana Rao and Gentile, JJ*) DHARAPU RAM JANOPAKAMA NIDHI LTD v LAKSHMI NARAYANA CHETTIAR

I L R (1939) Mad 803=

182 I C 899=12 R M 239=49 L W 671=

1939 M W N 488—A I R 1939 Mad 456=

adverse possession or estops claimant from pleading it. See ADVERSE POSSESSION—INTERRUPTION

(1939) 1 M L J 802 (F.B.)

—O 21 R 63—Scope—Suit under—Decree under execution whether justifiable—If relevant question for decision

In a suit by a defeated decree holder under O 21 R

—O 21, R. 63—Scope and effect of—Attachment of mortgaged property—Claim by mortgagee—Mortgage upheld by Court—Order not impeached—Effect—Sale in execution—Purchaser in execution and purchaser

limited, the order becomes conclusive between the city of redemption only in the auction (sale being subject to the decree-holder nor the auction

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O. P. CODE (1908), O. 21, R. 63.

49 L.W. 280—A.I.R. 1939 Mad. 393—
(1939) 2 M.L.J. 72.—O. 21, R. 63—*Suit by unsuccessful decree-holder—Frame of—If to be in representative capacity on behalf of all creditors—T. P. A. I., S. 53.*

A suit by a decree holder to set aside an order allowing a claim to attached property is one which can be brought by the decree holder alone on his own behalf. It is not necessary that he should sue in a representative capacity on behalf of all the creditors of the judgment debtor. S. 53 T. P. Act does not apply to such a suit under O. 21, R. 63. (*East A's and Agarwala, J.J.*) MT. BAS KUR v. GAYA MUNICIPALITY. 17 Pat 588—
180 I.C. 933—11 R.P. 563—5 B.R. 514—
20 P.L.T. 76—A.I.R. 1939 Pat 138

—O. 21, R. 63—*Suit to declare property attachable and saleable—Prayer for declaration that a sale deed was void—Proper frame of suit—Suit, if should be under S. 53, Transfer of Property Act.*

Where a person sues to get it declared that certain property was attachable and saleable in execution of a decree against him, he must sue in a representative capacity.

institute the suit on behalf of himself only under O. 21, R. 63, C. P. Code. (*Irmail, J.*) ASGHAR ALI v. ISHAQ ALI. 1939 A.W.R. (H.C.) 798—
1939 A.L.J. 1020.

—O. 21, R. 63—*Suit under—If one in continuation of claim proceedings—Order allowing claim—Subsequent transferee from claimant—If alienee pendente lite—Transfer if void under S. 64—Joinder of transferee as party to suit after one year—Effect—Suit—If barred.*

A suit brought under O. 21, R. 63, C. P. Code, to set aside an order allowing a claim to attached property is

O. P. CODE (1908), O. 21, R. 66

Where the judgment debtor has sold his property to another person, the fact that he was seriously embarrassed at that time by pressing creditors and had motive for disposing of the property to persons out of their reach does not prevent the burden from still lying on decree holder to show that the transaction of sale was not a real transfer. (*Rowland and Chatterji, J.J.*) SADHU PRASAD SAH v. SATNARAIN SAH.

182 I.C. 748—5 B.R. 820—12 R.P. 62—
A.I.R. 1939 Pat. 81.

—O. 21, R. 63—*Suit under—Proper relief—Execution sale held pending suit by defeated claimant—Sale set aside at his instance under O. 21, R. 89—Amendment of plaint to add relief of injunction to restrain decree holder from withdrawing amount deposited in Court—If allowable. See C. P. CODE, O. 21, R. 89 (2).*

—O. 21, R. 63—*Suit under—Valuation for jurisdiction—Property already sold in execution.*

The value of a suit under O. 21, R. 63, C. P. Code, for purposes of jurisdiction, is its value to the property is less than value of the action to the decretal amount but the If, however, the value of

the decree is less than the value of the property, then the value of the decree affects the value of the suit. If the property has already been sold in execution of the decree before the suit, the value of the suit to the plaintiff is the value of the property which he has lost by reason of the execution proceedings. (*Mitter and Khundkar, J.J.*) BANJOR DORABJI v. THE CALCUTTA CHEMICAL CO., LTD. 43 C.W.N. 609.

—O. 21, R. 63 A (Lahore)—*Enquiry by Court—When contemplated*

O. 21, R. 63 A contemplates an inquiry only where the judgment debtor claims a debt from a garnishee. Where money due to a member from Co-operative Society is

de by third
to attach.
CODE, O.
I.R. 305.

An adverse order against the claimant in the claim

instruction—Sale proclamation
property and to state value in

by the order. The burden cannot be discharged merely by pointing to the innocent appearance of the instruments under which the plaintiff claims. The Court in cases of sales in execution to value the property and state the value in the proclamation of sale. To so hold would involve C. P. Code, If in any

C P. CODE (1908), O. 21, R. 66.

—O. 21, Rr 66 and 90 O. 30, R. 3—*Judgment debtors sued not as partners but as individuals—Failure to serve notice on any of them—Material Irregularity.*

Where several judgment-debtors are sued not as partners in the name of their firm but as individuals and the decree directs all of them to pay the decretal amount, notices in execution under O. 21, R. 66 must be served on all judgment debtors. Failure to serve such notice on any of them amounts to an obvious breach of O. 21, R. 66 which cannot be cured under O. 30, R. 3 and which therefore amounts to a material irregularity within the meaning of O. 21, R. 90 (*Mir Ahmad, J.*) BUNDHELKHAND CYCLE & MOTOR AGENCY v. PEOPLE'S BANK OF NORTHERN INDIA, LTD.

181 I.C. 542=11 R. Pesh 70=A.I.R. 1939 Pesh 9

—O. 21, R. 66—*Order under—Nature of—Appeal.*

Per Sulaiman J.—An order under O. 21, R. 66 is not a judicial adjudication of any question arising between the parties to the execution, but merely the issuing of directions as to the mode of proclamation of sale. The approximate estimation of the value of the property cannot ever be regarded as a determination of any question arising between the decree holder and the judgment-debtor. (*Gu*)

proclamation is serious omission likely minds of those who propose to buy it therefore amounts to material irregularity 21, R. 90 (*Mir Ahmad, J.*) Bt. CYCLE & MOTOR AGENCY v. PEOPLE'S BANK OF NORTHERN INDIA LTD

11 R. Pesh 70=A.I.R. 1939 Pesh 9.

—O. 21, Rr. 66(3) and 90—*Failure to present application—Material irregularity.*

Pesh 70=
A.I.R. 1939 Pesh 9

—O. 21, R. 69—*Order of Court directing property to be sold at monthly sale commencing from 5th August—Sale held by Nazir on 12th after postponing it from day to day—Validity.*

The executing Court ordered the sale of a certain property to be held in the course of the monthly sales to commence on the 5th August at 12 noon and issued the sale proclamation on that basis. The Nazir postponed

C. P. CODE (1908), O. 21, R. 84.

the sale on the 5th and 6th August on the ground of absence of the presiding officer, and from 7th to 10th for want of time 11th was a Sunday and the property was sold on the 12th.

Held that, assuming that the postponement of the sale on the 5th and 6th August by the Nazir was in excess of his powers, the sale was not taken out of the monthly sales by his act, that the sale held on the 12th must be taken to be a sale in the course of the monthly sales and was, therefore, valid (*Mittur and Khundkar, JJ*) RANGPUR LOAN OFFICE, LTD v. TARIT BHUSAN ROY. I.L.R. (1939) 1 Cal 530=70 C.L.J. 97=

43 C.W.N. 539=A.I.R. 1939 Cal 369
—O. 21, R. 72—*Interest—Decree awarding interest until date of realisation—Decree-holder granted permission to bid and set-off—“Date of realisation”—Meaning of—Right to interest after date of sale. See DECREE—CONSTRUCTION. (1939) 1 M.L.J. 466.*

—O. 21, Rr. 72, 84(2) and 92—*Permission granted to decree holder to bid and set off—If dispenses with deposit of 25 per cent.—Order setting aside sale—Appeal.*

In execution of a decree the equity of redemption of the property was ordered to be sold. The decree holder

—O. 21, R. 84—*Bid on behalf of temple—Failure to deposit 25 per cent—Defect on resale—Nature of liability.*

A.I.R. 1939 Nag. 269.

—O. 21, R. 84 and S. 47—*Order setting aside sale—Appeal.*

Where on account of the failure of the auction-purchaser in execution to deposit 25 per cent. of the purchase-money, the Court orders a fresh auction to be held under O. 21, R. 84, no appeal lies from such order. It makes no difference whether the auction-purchaser is an outsider or the decree holder himself, because the fact that the decree holder himself is the

C. P. CODE (1908), O. 21, R. 84.

auction purchaser does not bring the case within the purview of S. 47 of the Code.

A.I.R. 1939 Lah. 46, Reversed. (*Aldison and Ram Lall, J.*) MRS. J. PELITTUR KANSHI GOPAL.

41 P.L.B. 568 = A.I.R. 1939 Lah. 210

—O. 21, R. 84 and 71—Sale when complete—Deposit when to be made—*Forthwith*, meaning of—

and an order is day and is not

bound to wait for the payment of 25 per cent. If there is any deficiency by reason of the purchaser's default it can be recovered from him. (*Stone, C. J. and Bose, J.*) LOKMAN CHHABILAL JAIN v. MOTILAL TULSI-RAM. 1939 N.L.J. 501 = A.I.R. 1939 Nag. 269.

—O. 21, R. 89—Applicable to decrees under Revenue Court decrees.

O. 21, R. 89, C. P. Code, does apply to Revenue Court decrees. (*Mars DEVI v. ZALIM SINGH.*)

1939

—O. 21, R. 89—Application Form of—Form of tender for a and 5 per cent. extra—Signing prayer for setting aside sale, if necessary.

Where a person comes to Court with a tender form, for the deposit of the sale price plus a penalty of 5 per cent. on it and the Judge signs the tender and the money is deposited, the tender must be deemed to be an application for setting aside sale.

181 I.C. 908 = 11 R.A. 622 = 1939 A.W.E. (H.C.) 145 = 1939 A.L.J. 97 = A.I.R. 1939 All 241

—O. 21, R. 89—Compliance—Deposit of decree amount and compensation within 30 days—Sufficiency—Application to set aside sale not presented—Effect—Sale—If can be set aside—Order refusing to set aside sale—Remission

A sale cannot be set aside under O. 21, R. 89, C. P. Code, in the absence of an application praying to set aside the sale, although the full decretal amount has been deposited. The deposit of the decretal amount and compensation does not amount to the meaning of O. 21, R. 89; implied from the fact of the deposit of the sale the decree compensation was deposited, accompanied by an application to set aside the sale and the executing sale holding that it could not be of an application therefor, and judgment-debtor made after 30 O. 21, R. 89, C. P. Code, for re was dismissed.

Y. D. 1939—18

C. P. CODE (1908), O. 21, R. 90.

Held, that the sale could not be set aside as there was to set aside the sale, and that the High power to interfere in such a case under ode. (*Harriet, C. J. and Powland, J.*)

GAURANGA CHARAN SAHU

5 C.L.T. 27 = 18 Pat. 210.

—O. 21, R. 90—Sale when complete—Deposit when to be made—

43 C.W.N. 252 = A.I.R. 1939 Cal 153.

—O. 21, R. 89 (2)—Execution sale of property pending suit under O. 21, R. 63, by defeated claimant—Plaintiff getting sale set aside by deposit of decree amount—Application to amend plaint by adding prayer to restrain decree holder from withdrawing amount deposited in Court—Competency.

—O. 21, R. 90—Applicability—Sale in execution of revenue decree under Madras Estates Land Act—Material irregularity—Application to set aside sale—If lies. See MADRAS ESTATES LAND ACT, S. 192.

49 L.W. 649.

1—Decree holder's application to implead auctioneer to be treated as one under

When there is a specific provision in O. 21, R. 90, C. P. Code, enabling a decree holder to apply to set aside a sale, his application can only be under R. 90 of O. 21, and S. 47, C. P. Code, could not possibly apply to it. The fact that the auction-purchaser was not made a party to that application could not in any way affect the question as to it could not have the effect of

C P CODE (1908), O 21, R 90

adjourned from time to time to 26 7-1935, was on that day, ordered to be held continuously from 26 7-1935 to 5 8 1935 and to be closed on 5 8 1935. Notices were published and circulated to that effect. There was, however, no sale on the 5th August, nor was it closed on that date. The property was put up for auction on 6 8 1935 and successive days and eventually knocked down on 12 8 1935.

Held that the Court's action in not selling the property on the 5th August or concluding the sale on that day was highly irregular, and its action in selling the

C P CODE (1908), O 21, R 90

mission that if the decree holder wanted to bid he must pay in cash half the amount. Thereupon the decree holder abstained from offering any bid at the sale with the result that the property was sold at an inadequate price.

CHANDRA MUKHERJEE v BATAKRISTO ROY

43 CWN 245

—O 21 R 90—Material irregularity—Sale before the hour fixed—Validity—Illegal sale—Court, if can set aside suo motu.

The holding of a sale before the time fixed is not merely an irregularity but an illegality which in itself renders the sale void. An irregularity which renders one main security deemed to be an earlier than that bidders arriving.

O 21 R 90 C

P Code by the Court itself, even if the objection is not raised by the applicant himself (*Gruer, J*).
PANNALAL v HASAN DADA 1939 N L J 319 =

A I R 1939 Nag 259

—O 21 R 90—Material irregularity—Sale of only a portion while proclamation was for the sale of whole house—Substantial injury—Absence of any general rule.

There is no doubt that where the sale proclamation stated that the entire house would be sold but in fact

50 L W 867

—O 21 R 90—Interests—Meaning of

be pecuniary interest in respect of property as that of the decree holder (*Stone C J and Niyogi, J*). ALL INDIA RAILWAYMEN'S BENEFITS FUND, LTD v RAMCHAND HEMRAJ I L R (1939) Nag 357 = 1939 N L J 238 = A I R 1939 Nag 179

—O 21, R 90—Interests—Meaning of—Purchaser after execution sale—Locus standi to apply to set aside sale.

It is now settled that the word "interests" as used in O 21, R 90, C P Code are not limited to proprietary or possessory interests in the property but extend to other kinds of interest pecuniary in any way affected by the sale. The nature of the interest might be at the time when the sale takes place or it might be judicially affected by it and if it is created after the sale, it is inconceivable how it can be affected by the sale, and give the person a right to set it aside. Consequently a person who purchases the property from the judgment debtor after the execution sale has no locus standi to make an application under O 21 R 90 (*Mukherjee v Batakristo Roy*).
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— 21 R 90—Person whose interests are affected by the sale—Meaning of—Creditor attaching property

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C. P. CODE (1908), O. 21, R. 90.

49 L.W. 458—A I R 1939 Mad 501—
(1939) 1 M L J. 608.

—O. 21, R. 90—"Person whose interests are affected by the sale"—Meaning of—Person obtaining attachment before judgment—Right to apply to set aside sale held in execution of another decree

A person who has obtained an attachment before judgment is, by virtue of the attachment itself, a "person whose interests are affected by the sale" within the meaning of O. 21, R. 90, C. P. Code, where the property attached by him is later sold in decree obtained by another person. The has not obtained a decree in his suit at all application does not make any difference. The words "person whose interests are affected by the sale" are not restricted to persons having a proprietary or possessory title in the property, but are intended to apply also to persons whose interests are affected by the sale.

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An auction-purchaser is entitled to apply for setting aside sale under O. 21, R. 90, C. P. Code, as a person whose interests are affected by the sale
and Niyogi
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—O. 21, R. 90—"Person whose interests are affected by the sale"—One of the judgment debtors a sale—Entire sale, if has to be set aside.

Where there is only one house which is irregularity in the conduct of the sale apportioned and it is such an irregularity as to an illegality, the sale cannot be set aside it is immaterial in such a case whether the debtors objected or not. (Gruer, J.) PANNALAL v. HASAN DADA.
1939 N L J. 318—
A I R 1939 Nag. 258.

—O. 21 R. 90, Proviso (2) (Lahore)—Applicability—Objection by judgment-debtor not served with notice regarding sale.

Proviso 2 to O. 21, R. 90 only precludes objection to a sale being entertained at a later stage if it could have been put forward earlier, but if the judgment debtors were never served with a notice it is obvious that the objection could not earlier and hence the Proviso does not apply. (Sarwan Singh v. Man Singh)
J. SARWAN SINGH v. MAN SINGH
41 P L R 553—A I R 1939 Pat 248 (F B).

—O. 21, R. 90, proviso under S. 60 after sale and before of Court.

Proviso 2 to O. 21, R. 90 only relates to what lies within O. 21, R. 90, that is, to matters in connexion with publishing or conducting the sale. It has and can have no application to matters which arise after the sale. When the sale falls conf

C. P. CODE (1908), O. 21, R. 91

to see if it has jurisdiction to sell the property. If it has no jurisdiction, it is its duty to end the execution proceedings by refusing to confirm the sale which so far has not become absolute (Addison and Ram Lall, J.J.) RAM CHANDAR v SARUPA
I L R (1939) Lah 103=184 I C 393=

12 R L 218=41 P L R 436—A I R 1939 Lah 113

—O. 21, R. 90 (1) (as amended by Patna High Court), Proviso (1) (a) and (b)—Construction and effect—Deposit not made from date of sale—Effect—Justified—Limitation Act, 1908.

Proviso (1) (a) and (1) (b), substituted to O. 21, R. 90 (1), C. P. Code, by the Patna High Court only contemplates that after an application to set aside sale has been presented an inquiry must be made by the

The date of admission is not governed by the Limitation Act. Where no deposit accompanies an application to set aside sale, the Court must inquire into the merits of the case.

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11 R P. 607=1939 P W N. 232=20 P L T. 275—A I R 1939 Pat 248 (F B).

—O. 21, R. 91 to 93—Judgment-debtor having no saleable interest—Refund of purchase-money—Remedy of purchaser—Right of suit

Whatever may have been the position under the Code of 1882, the law is now clear that a purchaser at a regular execution sale cannot obtain a refund of his purchase-money if the property is sold to a third party.

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regular execution proceedings in connection with which no fraud on the part of the decree holder or judgment-debtor has been established. (Edgley, J.) ASIAL CHANDRA v. RAM SWARUP.

I L R (1939) 1 Cal 452=184 I C 453=12 R C 231=43 C W N. 383=69 C L J. 138= A I R. 1939 Cal 3

C P CODE (1908) O 21 R 92

—O 21 R 92—*Appeal—Order setting aside sale*
—*Auction purchaser—Right of appeal*

While the auction purchaser is not a person affected with a notice under R 90 and cannot therefore move the Court under R 90 when it comes to a question of setting aside the sale he is a person affected within the meaning of the Proviso to sub R 2 of R 92. Under the Proviso to sub R (2) of R 92 he is entitled to notice and if he is entitled to notice then he is a party to the proceedings and can as such appeal from an order passed in such proceedings. (*Dames & Moore v. Tyan*)

—Offer
firm ed

O 21 R 92 applies to a sale that is a sale held in accordance with the provisions of O 21. But a sale that consists merely of the receipt of an offer by post in the absence of any bidders and its acceptance is not a sale at all. Such sale proceedings could not be confirmed. (*Burton FC v SHYAMABAI v THAKUR SAMPAAT KUMAR SINGH* 1939 N L J 226)

—O 21 Br 92 and 2—Execution Sale—Setting
as de of—Adjustment made before sale—Application to
record after sale

Where an adjustment is alleged to have taken place before the sale the sale is void if it is found that there had been such an adjustment the sale should be set aside on this ground. (*Dalsp Singh f*)

—O 21 E 92—*Fraud in conduct of sale as de sale—Maintainability*

A suit to set aside a sale on the ground of irregularity in the matter of publishing and conducting the sale is barred by the provisions of O 21 R 92 C P Code. The proper remedy is to institute a proceeding under O 21 R 90 C P Code. (*Mukherjee J*)
SATISH CHANDRA LODDAR v MAKBELALI TALUK
DAR 68 O L J 431

—O 21 R 93—Sale of right title and interest of judgment debtor in n subsequently recovered Purchaser's right to decree holder See CHASER S RIGHTS

—O 21 E 97—Applicability—Person entitled to order for possession

R 97 O 21 would apply equally to a person who was entitled to an order for possession in the same way as it in terms applies to the holder of a decree for possession. An order which has been made for a

C P CODE (1908) O 21. R 103

without any just cause by the judgment debtor or by some other person at his instigation or on his behalf. The word judgment debtor in R 98 must be interpreted in the light of the definition of the term as given in S 2 (10) C P Code (*Mulla J*) KULSOOMUNNISA v RAGHUBAR DAYAL, 1939 A W R (H C) 817.

—O 21 R 98—*Person other than the judgment debtor*—*Suit on mortgage against legitimate son of mortgagor*—*Plaintiff in awareness of existence of illegitimate son and not impleading him as defendant*—*Effect*—*Illegitimate son*—*If person other than the judgment debtor*

and the date of the decree and there is no fraud or collus on between the plaintiff and the legitimate son an illegitimate son of the mortgagor of whose existence the mortgagee is not aware at the time and whom he does not consequently implead as a defendant to his suit, would be bound by the decree in the suit. He cannot be regarded as a person other than the judgment debtor within the meaning of O 21 R 98 C P Code (*Abdur Rahman J*) VYTHILINGAM PILLAI v SFSHAN

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101—Applicability—Mortgagee from judgment debtor—Right to apply under

A mortgagee of the judgment debtor is not a legal
O 21 C P
O 21 C P
RACHUR
PWN 50=
939 Pat 263

—O 21, R 100—Right to apply under—Purchaser of transferable holding of judgment debtor—If representative of judgment debtor—Application by—Competency

A purchaser of a part of a transferable holding of a judgment-debtor is not the representative of the judgment-debtor. *Prima facie* has a right to sue for the same. *C.P. Code* 1190 and *ASAN v. BIBI HAKEMUN* B.R. 297 = 179 I.C. 831 = 1 = A.I.R. 1939 Pat. 253

—O 21 E 102—*Applicability —Involuntary
alienations pendente lite*

The rule of *lis pendens* is expressly recognised in O 21, R 102 C P Code as regards transfers in the course of execution proceedings. The language of the rule is sufficiently wide to cover both voluntary alienations of property by judgment-debtor and transfers by order under the Public Demands (Recovery) Act, 1938.

v BAIJNATH AIR 1939 Cal 494
 —O 21 R 98—Exercise of power under—Condi-
 tion precedent— Judgment debtor meaning of

The condition precedent to the Court putting the decree holder into possession in the exercise of its power under O 21 R 98, C P Code, is that the resistance or obstruction should have been occasioned

—O 21 R 103—A tacking decree holær purchasing mortgaged property and obtaining possession—Not party in mortgage suit—Dispossessed by purchaser of same property at mortgage sale—Application under O 21 R 100 dismissed—Suit for redemption fell under O 21 R 103

C. P. CODE (1908), O. 21, R. 103

A decree holder who had attached judgment-debtor's mortgaged property in execution of his money decree, purchased the same and obtained possession but was subsequently dispossessed by the purchaser of the same property in execution of the mortgage decree. The attaching decree holder applied under O. 21, R. 100 complaining of the dispossession, but his application was dismissed. Subsequently he filed a suit for redemption and based his claim on the fact that as he was not made a party to the mortgage suit, the mortgage decree and sale were not binding on him and therefore as auction-purchaser being in rightful possession of the disputed property could not be dispossessed therefrom.

Held, that the suit fell under O. 21, R. 103 and the mere fact that in the suit the decree holder sought to recover possession on redemption could not be a ground for holding that he did not claim right to the present possession of the property. (*Mahomed Noor and Chatterji, JJ.*) *BAIJU LAL MARWARI v. THAKUR PRASAD.* 180 I.C. 974=11 R.P. 552=5 B.R. 508=A.I.R. 193

—O. 21, R. 103—*Suit under—Loss of pending suit—Ultimate decree—Restoration—If can be ordered.*

Where during the pendency of a suit under O. 21,

C. P. CODE (1908), O. 22, R. 2.

J.) *PARMA SAH v. UNITED PROVINCES*

181 I.O. 662=1939 O.L.R. 345=11 R.O. 310=
1939 O.W.N. 500=1939 O.A. 464=
A.I.R. 1939 Oudh 196.

—O. 22, R. 1—*Suit for damages for malicious prosecution—Death of plaintiff after decree—Execution by Legal representative—Permissibility.*

It is no doubt true that the right to get compensation for malicious prosecution is personal to the person wronged, and to such a right the maxim *actio personalis moritur cum persona* (a personal right of action dies with the person) fully applies. If, therefore, such person dies before suing the wrong doer, his heirs, executors, or administrators cannot, after his death, maintain an action for the same relief against the wrong doer. In such a case, clearly, there is a 'discharge of the tort' by the death of the person wronged, and the wrong doer is released from all liability for his tortious act. It is equally clear that if the injured person had brought an action before his death, the action

deceased did not survive. The position, however, is

rule—If involves question of attachment.

It cannot be contended that until a debt is ascertained, it cannot be attached. R. 104 of ORDER OF QUESTION ANDERSON

unlike the original claim) is liable to attachment by a creditor of the decree-holder. It has to all intents and

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Court.

The provisions of O. 22, C. P. Code, do not apply to revision applications and hence no rule of limitation governs the application for substitution of parties in a

—O. 22, R. 2 & O. 23, R. 1 (3)—*Scope—Death of one of several plaintiffs—Their refusing to join as plaintiff added as pro forma defendant—Suit then proceeded with—Abatement—Refusal to join as plaintiff—*

Where a plaintiff after the institution of a suit transfers his entire rights but continues as co-plaintiff with his transferees and dies during the pendency of the suit and a decree is passed in ignorance of such death, the decree does not become a nullity because of that plaintiff's death, for the reason that after his transfer he was not a necessary party to the suit. (*Thomas, C.J. and Yorke,*

to join as a plaintiff and is impleaded as a defendant, and he does not make any formal application for withdrawing the suit or abandoning any part of his claim, O. 23, R. 1 (3), C. P. Code, will not apply, so as to bar a subsequent suit by him (*Fauz Ali and Farma, JJ.*) *MANKI KANAK RATAN v. SUNDAR MUNDA.* 179 I.O. 834=11 R.P. 413=5 B.R.

C. P. CODE (1908), O 22, R 2

1939 P.W.N 41=20 P.L.T 346=
A.I.R. 1939 Pat 225

—O 22, R 2—*Suit by reversioners as such—Death of one—Effect—Failure to implead legal representative—Abatement*

Where two of the nearest reversioners file a suit to challenge an alienation by a widow and one of them dies during the pendency of an appeal filed by both of them and in ignorance of that and without the addition of his

—O 22, Rr 3, 4 and 12—Applicability to execution proceedings—Application to bring on record legal representatives of deceased decree holder. See C.P. CODE S 47. A.I.R. 1939 Sind 234

—O 22, Rr 3 and 4—Applicability—Person appointed by Court under O 1, R 8

Where a person is appointed application under O 1, R 8 to be sue suit on behalf of a class, he is not a personal capacity, but is impleaded as a representative of a class and derives authority to do so from the order of the Court. This right is personal to him, and on his death it does not survive to his personal heirs who, without another order by the Court appointing them or any of them *ex nomine* have no authority to act as representatives of the class. In such a case the right to sue does not survive and therefore the provisions of O 22 Rr 3 and 4 do not apply. Hence it is not necessary for the plaintiff under the law to bring his legal representatives on the record as defendant's as required by O 22 R 4 prescribed under Art 177 L. and *Dilip Singh, J.J.*

HUSSAINA

—O 22 Rr 3 and 4—*Death of appellant—*

can be made and allowed even after the period of limitation has expired and such applications do not operate

—*Abatement—Substitution of some only of his heirs—*

Where a sole defendant in a suit against whom a

C. P. CODE (1908), O 22, R 4

Where there is a decree in favour of two persons and one of them dies and the judgment debtor prefers an appeal against the other only, he takes the risk that whatever relief he might obtain in the appellate Court, it will bind that party only against whom the appeal is filed and will have no effect on the party left out unless it can be shown that the appeal itself was incompetent in the absence of the legal representatives of the dead person as a party to the appeal along with the survivor

(Mehra & M. and Mehta, J.M.) BANSIDRO SINGH v INGH 1939 R.D. 310=

1939 A.W.R. (B.R.) 259.

3 and 11—*Suit by co-sharers to set aside the decree if any that each of the plaintiffs representative not added—*

equal shares in the between themselves

each be liable to pay a half of the revenue, each of them is so far as the Government is concerned liable to pay the whole. So when both of such persons sue as one entity to recover from the defendant the revenue which they had been wrongly compelled to pay, there is one half of pending the es the whole made about the payment made by the dead person (*Hamilton and Benne*)

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A.I.R. 1939 Oudh 241.

—O 22 R 3 (1)—*Right to apply under—If confined to heirs of deceased plaintiff—Person claiming to be legal representative or claiming interest in continuance of suit—Right of*

There is nothing in O 22 R. 3 (1), C.P. Code, to

CHETTIAR

180 I.C. 340=11 R.M. 691=
48 L.W. 932=1939 M.W.N. 95=
1939 Mad 148

Decree—Death of Representative not

passed against a number of defendants and one of them dies and his legal representative is not brought on record, the suit does not abate against all. The proceedings can still go on

C. P. CODE (1908), O. 22, R. 5.

the plaintiff against all the defendants on whose joint act the cause of action for the suit is based, and one of the defendants dies during the pendency of the appeal against the dismissal of the suit, and where his legal representatives are not brought on record, the appeal is incompetent. In the absence of the legal representatives of the deceased defendant, the appeal is incompetent. In the absence of the legal representatives of the deceased defendant, the appeal is incompetent. In the absence of the legal representatives of the deceased defendant, the appeal is incompetent.

—O. 22, R. 5—Decision under—Finality—Limits

discharge or satisfaction of the decree in connection with which the order concerned was made. (*Stone, C. J. and Bose, J.*) SHALIGRAM v. DHURPATI.

I L R (1939) Nag 165—182 I O. 285—12 R. N. 6—1939 N L J 82—A I R 1939 Nag 147.

—O. 22, R. 5—Duty of Court—"Legal representative"—Meaning of—"Intermeddler"—If to be a true representative

Under R. 5 of O. 23, when more than one claim to be legal representatives of a deceased's property the Court is required to decide which of the rival claimants is in fact the legal representative. The definition in S. 2 merely means that a person who intermeddles with the property of a deceased person is not a true representative.

deceased's property. (*Agarwal v. LUKHER KUR.*)

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—O. 22 R. 6—Death of Decree for amount admitted See DECREE—VALIDITY.

—O. 22, R. 9—Applicable by reversioner to set aside alienation by widow—If bars fresh suit by another reversioner.

It is true that a suit by a reversioner is a suit on behalf of the whole body of reversioners, but the abatement of a suit instituted by a reversioner to set aside an alienation by a widow does not bar a fresh suit for the same relief by another reversioner. The provisions of O. 22, R. 9 as to abatement do not apply to such a case. A I R 1931 Lah. 79, Rel on. (*S. MAD KHAN v. JAN MOHAMMAD.*)

—O. 22, R. 9—Application Suit not "declared" to have abated.

A I R 1939 Lah. 512
—O. 22, R. 9 and 10—Scope—Decree in suit for possession of land—Appeal by defendant—Assignment by plaintiff pending appeal—Failure of assignee to get himself substituted or brought on record—Appeal decided

C. P. CODE (1908), O. 22, R. 9.

against plaintiff—Second appeal by latter—Death of plaintiff pending second appeal—Application by assignee for substitution—Maintainability.

D.P. sued for possession of a plot of land from defendant No. 2 and his transferees defendants 3 and 4. There was a compromise between plaintiff and defendant No. 4, and ultimately the suit was decreed *ex parte* 3 only. The latter appealed to the District Court. Pending the appeal the plaintiff to the petitioner by a deed dated 1 was decided on 7-12-1937 against the plaintiff. The petitioner, however, did not avail himself of the provision of O. 22, C. P. Code, and did not come on record in the appeal. A second appeal was filed in the High Court by the plaintiff against the

decree, that the devolution of interest having taken place during the pendency of the appeal before the District Court, and not while the second appeal was pending in the High Court, the High Court had no power to make any substitution under O. 22, C. P. Code. The appeal was dismissed.

—O. 22, R. 9—"Sufficient cause"—Appellant living elsewhere than in village of respondents—Ignorance of death—Sufficiency

The question whether there is sufficient cause for setting aside an appeal is a matter for each case. No hard and fast rule as to what constitutes sufficient cause. Where the appellant is a zemindar, has left the village of a law agent, and lived in the village or here the deceased respondent in the ordinary course of the death, or the appeal had been to the respondent, it exists for setting the appeal aside.

—O. 22, R. 9 (2)—Sufficient cause—Doubtful construction of old Act and ignorance of new amendment.

Later on, an Amending Act (XI of 1938) was passed. This Act received the assent of the Governor-General on 8th April, 1938 and was given retrospective effect as from 14th April, 1937. On 16th May, 1938, the plaintiff applied for addition of the widow as a party defendant and she was substituted under O. 22, R. 10, C. P. Code. This order was, however, vacated on 30th June, 1938 on objection by the widow, and the suit was held to have abated as against

C P CODE (1908), O 26, R 4

In a suit by the registered proprietors of certain designs for infringement of the designs, the defendants who were innocent infringers admitted the plaintiffs'

offer which the defendants made and continued to prosecute the suit, and the suit finally ended in a decree in terms of the offer made by the defendants

Held (on the question of costs) that the defendants should be liable only for the plaintiffs' taxed costs of the action up to the date of the offer made by them but that the plaintiff should be made liable for the taxed costs of the defendants from and after that date. There

C P CODE (1908) O 32, R. 3

the materials placed before the Court which included a Commissioner's report in a prior criminal case relating to the same dispute and the Courts of fact ultimately declin

(Adaptation of Indian Laws) Order, 1937 Rr 9 and 10—Agent for the Secretary of State in respect of cases concerning East India Railway—Absence of a Crown pleader

Where by a notification the Agent East India Railway, has been appointed as the agent of the Secretary of State to receive processes in respect of cases concerning the East India Railway and where after the Gov-

TION LTD v ARMED ABDUL KARIM BROS, LTD
182 IC 577=12 EB 20=
41 Bom LR 290=AIR 1939 Bom 198

—O 26 R 4—Applicability—Execution applications—Power to issue commission in

The provisions of O 26, R 4 C P Code, are not applicable to execution proceedings and hence they made so by sec 141
a Court to issue a commission in execution of a decree to be br

long and careful local investigation except upon clearly defined and sufficient grounds is to be deprecated

—O 26 R 10—Commissioner's report rejected by Idol.

measurement if there had been really an encroachment, notwithstanding the suggestion of the Court when the trial began, but insisted upon a decision of his case on

—O 29, R. 1—Scope—If exclude operation of O 6, Rr 14 and 15

O 29 R 1 C P Code is only a term to be used and

AIR 1939 Bom 347
—O 30—Decree against firm—Appeal by one of the members—Competency

In the case of a firm where the individuals composing the firm could appeal against the decree as against the firm (*Allsop, J*)
HADEO PRASAD v KUNJI LAL VIDYA RAM
1939 A W R (H C) 814=1939 A L J 1016

—O 30 R 10—Firm of one person—Suit in

tees, execu-

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C. P. CODE (1908), O. 21, R. 103.

A decree-holder who had attached judgment debtor's mortgaged property in execution of his money decree, purchased the same and obtained possession but was subsequently dispossessed by the purchaser of the same property in execution of the mortgage decree. The attaching decree holder applied under O. 21, R. 100 complaining of the dispossession, but his application was dismissed. Subsequently he filed a suit for redemption and based his claim on the fact that as he was not made a party to the mortgage suit, the mortgage sale were not binding on him and therefore

—If can be ordered.

Where during the pendency of a suit under O. 21, R. 103, C. P. Code, the plaintiff loses possession of the property, an order for restoration of possession would be justified, if the suit is ultimately decreed. (Bennett,

rule—If involves question of attachment.

It cannot be contended that until a debt is ascertained, it cannot be called a 'debt' within the meaning of R. 104 of O. 21. This rule does not question of attachment. (Yorke, J.)

ANDERSON.

179 I.C. 601=

1939 O.L.R. 61-19

1939 O.W.N. 82=A.I.R. 1

O. 22—Applicability—Revisions

Court

TATES ACT, RULES, R. 6 AND C. P. CODE, O. 22,

1939 A.W.R. (H.O.) 7

O. 22, R. 1—Plaintiff transferring all rights—Transfers parties—Decree in ignorance

C. P. CODE (1908), O. 22, R. 2

J.) PARMA SAH v. UNITED PROVINCES

181 I.C. 662=1939 O.L.R. 345=11 R.O. 310=

1939 O.W.N. 500=1939 O.A. 464=

A.I.R. 1939 Oudh 196

O. 22, R. 1—Suit for damages for malicious prosecution—Death of plaintiff after decree—Execution by Legal representative—Permissibility.

It is no doubt true that the right to get compensation for malicious prosecution is personal to the person

his death,
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deceased did not survive. The position, however, is different when the suit had been decided in the plaintiff's time and a decree passed in his favour granting him compensation. On the passing of the

unlike the original claim) is liable to attachment by a creditor of the decree-holder. It has to all intents and purposes, become a part of the "property" of the decree-holder.

O. 22, R. 2 & O. 23, R. 1 (3)—Scope—Death of to join as t then pro plaintiff—

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apply, so as to
Ali and Vorma,
IDAR MUNDA.

=5 B.R. 298=

C. P. CODE (1908), O 22 R 2

1939 P.W.N. 41-20 P.L.T. 346=
AIR 1939 Pat 225

—O 22, R 2—*Suit by reversioners as such—Death of one—Effect—Failure to implead legal representative—Abatement*

Where two of the nearest reversioners file a suit to challenge an alienation by a widow and one of them dies during the pendency of an appeal filed by both of them and in ignorance of that and without the addition of his legal representative the appeal is disposed of, on a contention that the appeal had abated it was held that the right sought to be enforced was an individual right in each of the plaintiffs and not a joint right and as such the failure to add the legal representative of the deceased reversioner could not affect the rights of the other reversioner to prosecute his appeal (*Iqbal Ahmad v. ANANT BAHADUR SINGH v. TIRATHRA*)

184 I.C. 169=

1939 A.W.R. (H.C.) 411=A.I.R.

—O 22, Rr 3, 4 and 12—Applicability—Application to bring on representatives of deceased decree holder—CODE S 47

A.I.R. 1939 Sind 208

—O 22 Rr 3 and 4—Applicability—Person appointed by Court under O 1, R 8

Where a person is appointed by the Court on an application under O 1, R 8 to be sued and defend the suit on behalf of a class, he is not a party to the suit in his personal capacity but is impleaded as a representative of a class and derives authority to do so from the order of the Court. This right is personal to him and on his death it does not survive to his personal heirs who without another order by the Court appointing them, or any of them *ex nomine* have no authority to act as representatives of the class. In such a case the right to sue does not survive and therefore the provisions of O 22 Rr 3 and 4 do not apply. Hence it is

within time—Appeal, if abated

can be made and allowed even after the period of limitation has expired and such applications do not operate as an automatic abatement of the appeal (*Young C. J. and Ram Lal*)

—O 22 Rr 3 and 11—Death of sole defendant appellant—Substitution of some only of his heirs—Abatement of appeal

Where a sole defendant in a suit against whom a decree is passed dies pendente lite and some only of his heirs as appellants, the appeal abates if the other heirs are unknown or unwilling to proceed with the respondents (*Sen, J.*)

HOSSAIN
—O 22 R 3—Joint decree holders—Appeal against

C. P. CODE (1908), O 22, R. 4

Where there is a decree in favour of two persons and one of them dies and the judgment debtor prefers an appeal against the other only, he takes the risk that whatever relief he might obtain in the appellate Court, it will bind that party only against whom the appeal is filed and will have no effect on the party left out unless it can be shown that the appeal itself was incompetent in the absence of the legal representatives of the dead person as a party to the appeal along with the survivor (*Marsh, S.M. and Mehta, J.M.*)

BANSDEO SINGH v. KIRPA NARAIN SINGH

1939 E.D. 310=

—O 22, Rr 3 and 11—*Suit by co-sharers to recover revenue paid—Presumption if any, that each has paid a portion—Death of one of the plaintiffs, respondent not a party to the suit*

which they had been wrongly compelled to pay, there is no presumption that each of them has paid one half of it.

When such a suit is decreed and pending the appeal one of the plaintiffs respondents dies the whole appeal abates as no presumption could be made about the payment made by the dead person (*Hamilton and Bennett, J.J.*)

183 I.C.

1939

—O 22 R 3 (1)—Right to apply under—If confined to heirs of deceased plaintiff—Person claiming to be legal representative or claiming interest in continuance of suit—Right of

must be held to be such as would not allow the suit to

CHETTIAR

180 I.C. 340=11 R.M. 691=

48 L.W. 932=1939 M.W.N. 85=

A.I.R. 1939 Mad 148

R 4—Joint and several decree—Death of judgment debtors—Legal Representative not

Where a joint and several decree is passed against a number of defendants and one of them dies and his legal representative is not brought on record, the suit does not abate against all. The proceedings can still go on

O. P. CODE (1908), O. 22, R. 6.

the plaintiff against all the defendants on whose joint act the cause of action for the suit is based, and one of the defendants dies during the pendency of the appeal against the dismissal of the suit, and where his legal representative are not brought on record, the appeal is incompetent. In the absence of the legal representa-

Limits.

except in so far as it concerns the suit in which the decision is made. But no subsequent decision in a separate suit can be used to affect the rights of the parties so far as questions relating to the 'execution' of the suit are concerned.

Intermeddler—Meaning of—Intermeddler—If to be true representative.

Under R. 5 of O. 23, when more than one claim to be legal representatives of a deceased's property the Court is required to decide which of the rival claimants is in fact the legal representative. The definition in S. 2 merely means that a person who intermeddles with the estate may be treated as the legal representative. It does not mean that a person intermeddling with the estate of the deceased is to be preferred to a person who is found to be the true legal representative of the deceased's property. (*Agarwal v. LUKHER KUER*.)

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—O. 22, R. 6—Death of Decree for amount admitted. See DECREE—VALIDITY.

—O. 22, R. 9—Applicable by reversioner to set aside alien fresh suit by another reversioner.

It is true that a suit by a reversioner of the whole body of reversion of a suit instituted by a reversioner to set aside an alienation by a widow does not bar a fresh suit for the same relief by another reversioner. The provisions of O. 22, R. 9 as to abatement do not apply to such a case. A.I.R. 1931 Lah. 79, Rel on. (*Shemp, J.*) MOHAMMAD KHAN v. JAN MOHAMMAD.

—O. 22, R. 9—Application Suit not "declared" to have abated.

It is wrong to say that an application under O. 22, R. 9 is competent only when it is made after the suit has been declared to have abated. (*Tek Chand and Dalip Singh*.)

—O.

postponement
by plaintiff pending appeal—Failure of assignee to get himself substituted or brought on record—Appeal decided

C. P. CODE (1908), O. 22, R. 9.

against plaintiff—Second appeal by latter—Death of plaintiff pending second appeal—Application by assignee for substitution—Maintainability

D P. sued for possession of a plot of land from defendant No. 2 and his transferees defendants 3 and 4. There was a compromise between plaintiff and defendant No. 2 and the Court decreed *ex parte*

the plaintiff. The plaintiff then appealed to the High Court by a deed dated 7-12-1937 against the decree. The plaintiff did not avail of the Code, and did not come on record in the appeal. A second appeal

was filed by the assignee praying that the abatement might be set aside, and he might be substituted in place of the deceased plaintiff appellant, as the assignee of the plaintiff.

Held that the devolution of interest having taken place before the death of the plaintiff while the second appeal was pending, the High Court had no jurisdiction to substitute under O. 22, C. P. Code.

—O. 22, R. 9—"Sufficient cause"—Appellant living elsewhere than in village of respondents—Ignorance of death—Sufficiency

The question whether there is sufficient cause for setting aside the abatement of an appeal is a matter for decision on the facts of each case. No hard and fast rule can be laid down as to what constitutes sufficient cause. Where the appellant is a zemindar, has left the village of a law agent, and lived in the village or here the deceased res-

—O. 22, R. 9 (2)—Sufficient cause—Doubtful construction of old Act and ignorance of new amendment.

On 17th January, 1938, X a Hindu, who was a defendant and a widow. On the death of the plaintiff, the legal representative of the plaintiff was substituted in the suit. The suit was in force. Later on, an Amending Act (XI of 1938) was passed. This Act received the assent of the Governor-General on 8th April, 1938 and was given effect from 1st April, 1937. On 16th April, 1938, the plaintiff died. The plaintiff was substituted in the suit. This order was, however, set aside on 10th June, 1938 on objection by the widow, and the suit was held to have abated as against

C P CODE (1908), O 22, R 10

her On 20th July 1938 the plaintiff applied under O 22 R 9 C P Code, for setting aside the abatement

Held that sufficient grounds had been made out for setting aside the abatement, having regard to the fact that S 3 (1) of Act XVIII of 1937 might possibly be

No doubt it is true that parties who have assigned the whole of their interest *pendente lite* cannot ask for judgment in respect of an interest which is no longer theirs But it does not follow that their assignees are thereby precluded from recovering (*Lord Porter*)
MONGHIBAI v COOVERJI UMERSEY

I L R (1939) Bom 503 = 11 R P C 295 =

1939 O W N 626 = 1939 A W R (P C) 136 =

70 C L J 261 41 Bom L R 1127

50 L W 926 = 1939 A L J 863 = 182 I C 1 =

43 C W N 869 = 1939 O L R 392 = 5 B R 750 =

A I R 1939 P C 170 (1939) 2 M L J 366 (P C)

—O 22 R 11 and 12—Applicability—Appeal from order in execution

An appeal from an order in execution proceedings is not a *res inter alios acta* and it is not a *res judicata* in the classes of cases in which it is made.

appeals falling under O 22 R 11 and 12 to such appeals for an appeal in execution proceedings cannot be executed under R 12 of O 22 as referring only to the Court and not to those appeals arising from execution proceedings (*Stone C. J. and Niyogi J.*)
RAO v YADORAO

—O 22 R 12—Applicability—Appeal from order in execution See C P CODE O 22 R 11 AND 12

—APPLICABILITY I L R, (1939) Nag 119

—O 23 R 1 and 3—Applicability—Adjustment with reference to preliminary decree for sale on mortgage See C P CODE O 21 R 2—SCOPE OF

1938 A W R (H C) 859 = 1938 A L J 1231

—O 23 R 1—Applicability—Previous suit for declaration that certain share in property was plaintiff's

Fresh suit for

that certain share in property was plaintiff's and subsequently a fresh suit for partition of that property is brought O 23 R 1 is not applicable and the fresh suit is not barred (*Blacker, J.*)
MT KHAIRAN v ATA MOHAMMAD

—O 23 R 1—Bar of fresh suit—Dismissal of

—O 23 R 1—Order simply allowing suit to be withdrawn—Order allowing withdrawal and also dismissal of suit—Distinction between

There is no distinction between the cases where a suit is simply allowed to be withdrawn and the cases where the Courts though allowing the suit to be withdrawn add that the suit is dismissed (*Dalip Singh J.*)
DAULAT RAM VIDYA PARKASH v BANSI LAL

—O 23 R 1—Withdrawal without leave to file

—O 23 R 1—Leave to withdraw—Absence of specific permission to bring fresh suit—Inference

Where it is clear from the application that the suit is not a *res inter alios acta* and it is not a *res judicata* in the classes of cases in which it is made.

—O 23 R 1—Leave to withdraw—Absence of specific permission to bring fresh suit—Inference

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C P CODE (1908), O 23 R 1

it will certainly be open to the plaintiff to file a suit for redemption of the mortgage and it will not be barred by the provisions of O 23, R 3 (*Ismail J.*)
RAM BHAROSE v BARAMDIN

184 I C 808 =

1939 R D 422 = 1939 A L J 892 =

182 I C 808 = 1939 A L J 892 =

182 I C 808 = 1939 A L J 892 =

182 I C 808 = 1939 A L J 892 =

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182 I C 808 = 1939 A L J 892 =

C. P. CODE (1908), O. 23, R. 2.

where the cause of action and relief claimed are identical with those of the former suit, the later suit is barred not on the principle of *res*

provisions of O. 23, R. 1, C. P.

RAM BHAROSE V. BARAMDIN

1939 B.D. 422=

Suit—Second suit instituted without payment of costs—If void ab initio.

Under R 1 of O 23, a plaintiff can withdraw a suit

C. P. CODE (1908), O. 24.

be made before the Court is to be satisfied of its existence, still the more complicated the compromise, the be drawn up
oved, There
about small
rally, but the
on cases of
be proved
ties to the
y compro-
HAMID

181 I.O. 51=10 B.R. 448=A.I.R. 1939 Rang. 149.

—O. 23, R. 3—Compromise—When embodied in the decree—Omission in the operative part of the decree
mitted portion—Execution or

passed a compromise decree
be made part of the decree,

compromise.

An award made in an arbitration without the inter-

relates to these plots it cannot be said that the compromise in the decree of the statement that the exchange had taken place, is in any way a bar to the Court's plaintiff's title to the
anga Nath, JJ)

121 E.A. 121=1939 A.L.J. 260=

1939 A.W.R. (H.C.) 270=A.I.R. 1939 All 454.

pute by lawful agreement by reason of a submission

—O 23, R 3—Preliminary mortgage decree for sale—Subsequent adjustment out of Court—If lawful.
A real-estate mortgage decree for sale is a formal ad-

—O. 23, R 3—Complicated compromise—Drawing up terms in writing—Definiteness.

Although the requirements of O. 23, R. 3 say nothing about any particular form in which a compromise is to

design—Defendant admitting right of plaintiff and submitting to decree for injunction and also offering to pay profits and costs—Refusal by plaintiff to accept offer—Liability for costs—Rules.

Y. D. 1939-19

C. P. CODE (1908), O. 26, R. 4

In a suit by the registered proprietors of certain designs for infringement of the designs, the defendants who were innocent infringers admitted the plaintiffs'

offer which the defendants made and continued to prosecute the suit, and the suit finally ended in a decree in terms of the offer made by the defendants.

Held (on the question of costs), that the defendants should be liable only for the plaintiffs' taxed costs of the action up to the date of the offer made by them but that the plaintiff should be made liable for the taxed

C. P. CODE (1908), O. 32, R. 3

the materials placed before the Court which included a Commissioner's report in a prior criminal case relating to the same dispute, and the Courts of fact ultimately declin-

(Adaptation of Indian Laws) Order, 1937, Rr. 9 and 10—Agent for the Secretary of State in respect of cases concerning East India Railway—Absence of a Crown pleader

Where by a notification the Agent, East India Railway, has been appointed as the agent of the Secretary of State to receive processes in respect of cases concern-

tion, LTD. v. AHMED ABDUL KARIM BROS. LTD.
182 I C 577=12 R B 20=
41 Bom L R 290=A I R 1939 Bom 198.

—O. 26, R. 4—Applicability—Execution applications—Power to issue commission in.

The provisions of O. 26, R. 4, C. P. Code, are not applicable to execution proceedings and have not been made so by sec. 141 C. P. Code. O. 26, R. 4 empowers a Court to issue a commission application in execution process of a decree to be brought on decree holder is neither a proci

—O. 26, Rr. 9 and 10—Commissioner's report—Principles to be adopted by Courts in dealing with

In this case their Lordships of the Privy Council have remarked that the following is a correct statement of the principle to be adopted in dealing with the Commissioner's report 'Interference with the result of a long and careful local investigation except upon clearly defined and sufficient grounds is to be deprecated.

—O. 29, R. 1—Scope—If exclude operation of O. 6, Rr. 14 and 15

O. 29, R. 1, C. P. Code, is only a permissive rule and does not exclude the operation of O. 6, Rr. 14 and 15

—O. 30—Decree against firm—Appeal by one of the members—Competency.

In the case of a decree against a firm where the decree holder is entitled to recover money due under it, jointly and severally from the individuals composing the firm any member of the firm could appeal against the decree as against the firm. (Alltop, J.) MAHADEO PRASAD v. KUNJI LAL VIDYA RAM.

1939 A W R. (H C.) 814=1939 A L J. 1016.
—O. 30, R. 10—Firm of one person—Suit in

suit in the name of the firm under O. 30, R. 10, MANGHARAM v. S. 182 I C 881=12 R B 20=41 Bom L R 290=A I R 1939 Bom 198.

—O. 32, R. 3—Suit against an

here a suit is not one by or against trustees, executors or administrators but a suit against the idol it

O. P. CODE (1908), O. 32, R. 3.

Where a person proposed as a guardian *ad litem* appeared and represented the minor, the absence against him, the absence him as guardian would not affect the decree. (Mitter and Khundkar, J.J.)
CHANDRA ROY. 69

—O. 32 R. 3—Ga

suit—Appointment of Practice in Calcutta H.

According to the practice up to the year 1936, a guardian *ad litem* appointed in a suit ceased to be the guardian on the passing of the decree and the decree-holder was bound to have a new guardian *ad litem* appointed at the execution stage. (Mitter and Khundkar, J.J.) PRIYA KANTA PAL v. SUDHIR CHANDRA ROY. 69 C L J. 288—43 C W N. 619—A I R 1939 Cal 471.

—O 32, R. 3—Powers and duration of guardianship—Appeal filed by third person—Order of dismissal—Effect of.

Execution proceedings are only a continuation of the regular suit and a guardian *ad litem* appointed in the civil suit continues to be guardian *ad litem* in execution proceedings and for the purposes of appeal. After a decree was passed against a minor and the case had been transferred to another Court for execution the guardian *ad litem* did not wish to continue and so another guardian *ad litem* was appointed. The proceedings in execution were however conducted by a third person and during such proceedings he appeared on behalf of the minor. In an appeal filed by him,

Held, that where there was a properly constituted guardian *ad litem* no one else could represent the minor and hence the appeal must be dismissed.

Held, further, that such dismissal of appeal on the ground that the minor was not properly represented could not affect the minor's interest as he was not bound by it. (Wright, J.) SINGARAM v. SOMASUNDARAM.

A I R. 1939 Rang 444

—O. 32, R. 3—If applies to proceedings under United Provinces Encumbered Estates Act. See UNITED PROVINCES ENCUMBERED ESTATES ACT AND R. 6 OF RULES UNDER THE ACT. 1939 A L J. 411.

—O. 32, R. 3 (5)—Scope and effect of—Suit against minor—Latter becoming major pending suit—Fact of majority not brought to notice of Court—Decree by Court as if defendant was still minor—nullity.

Where a decree is passed by a competent court against a defendant, who was a minor at the time of institution of the suit and who was the pendency of the suit, but whose records as a minor represented by a guardian *ad litem* is a perfectly good decree, and it cannot be said that such a decree is a nullity. (Khasia Mohammad Noor and Rowland, J.J.) RATAN PRASAD MARWARI v. BRIDHI CHAND SHOROFF. 18 Pat 539—1939 P. W N. 677—20 Pat. L T. 765—A I R. 1939 Pat. 601.

—O. 32, Rr 5 and 7 (2)—Scope—Compromise by guardian without leave of Court—Decree based on—If nullity—Minor represented by guardian—Absence of formal order of appointment of guardian—Effect—Decree based on agreement by such guardian—If nullity—Executability against minor—Under O 32, R. 7 (2),

an agreement or compromise by a guardian of a minor without leave of Court is void, but only voidable at the instance of the minor concerned. Where a minor is properly represented in

O P CODE (1908), O. 32, R. 6.

the suit by of guardian but there is no formal order of appointment of guardian

—O. 32, R. 5 (2)—Scope—Application for execution by minor without guardian—Competency—Discretion of Court

Sub rule (2) to R. 5 of O. 32 does not say that an order on any application made by a minor where no next friend or guardian is appointed 'shall' be discharged; it says 'may' be discharged. The sub-rule cannot be so construed as to deprive the Court of its discretion to allow proceedings, which are in the interests of the minor, to go on, or to permit them to be frustrated by mere accident or technicality. Hence, where a minor has made an application for execution of rent decrees and there is no guardian appointed, the Court may allow the receiver appointed in the proceedings to recover rent on behalf of minor. (Davis, J.C. and Tyagi, J.) LALUMAL DHOLMAL v. HARUMAL LALSING. A I R. 1939 Sind 332.

—O. 32, R. 6—Scope—Compromise decree—Provisions for payment of money to next friend of minor—Payment out of Court to next friend—If permissible—Duty of Court to direct security before payment—Provision for payment direct to next friend—If unlawful—Promisor if can ignore the provision.

Where a decree, even in the case of a compromise decree in favour of minors sanctioned by the Court as being beneficial to the minor parties, provides that a certain payment shall be made to the minor plaintiff's next friend, it must be understood as meaning that the payment shall be made under the provisions of the Civil Procedure Code, and that the next friend must apply to the Court to receive the money, and, if not a statutory guardian, must furnish the requisite security. O. 32, R. 6, C. P. Code, is imperative on this point. The next friend at the time of payment of the money need not be the same person who was the next friend when the compromise was made.

to ignore such part of the contract by way of analogy to S. 56, Contract Act, as being unlawful and therefore void. (Burn and Stodart, J.J.) KASTI CHETTI v. NAGAPPA CHETTI. 1939 M. W N. 854—50 L W. 384—A I R 1939 Mad. 814—(1939) 2 M L J. 262.

—O 32, Rr. 6 and 7—Natural guardian appointed as guardian ad litem—Powers—Limitations.

It is well established that the *Karta* of a joint Hindu family or the natural guardian of a minor who has sued as his next friend or who has been appointed his

natural guardian do anything on behalf of the minor which he is debarred from doing as next friend or

O P CODE (1908), O. 32, R. 6.

guardian *ad litem* without leave of the Court. A payment to such a person by the judgment debtor out of Court without its leave is accordingly invalid and cannot be given effect to. Such a payment would not discharge the judgment debtor. (*Mitter and Rau*)

SAMARENDRA NATH MITTER *v* ASHUTOSH ROY
43 CWN 962=70 CLJ
AIR 1939 Cal

—O 32 R 6 (1) (b) and 7 (1)—*Decree in favour of minor—Assignment by guardian ad litem without leave of Court—Validity—Right of judgment debtor to attack assignment*

An assignment of a decree passed in favour of a

C P CODE (1908) O 32, R 7.

award cannot afterwards be challenged as not binding on the minor on the ground that no leave of the Court was obtained in the case under O 32, R 7, C P Code. It does not follow that the consent of the guardian to

be no Court whose sanction can be sought. Unless an agreement is found to have been entered into by the minor's guardian during the pendency of the suit, the

either directly or indirectly the protection given to the minor would be reduced to a far while restrained from receiving any the judgment debtor, were free to assign third party and receive money from the assignee who would then recover it from the judgment debtor. To

—O 32 R 7—*Applicability—Natural or certified guardian ad litem—Compromise—Sanction of Court—*

Even if a natural or a certificated guardian appointed

execution or to substitute
(*Mitter and Rau*)
v ASHUTOSH ROY

70 CLJ

—O 32 R 7—*Applicability—Adjustment of decree by compromise—One of the parties a minor—Leave of Court—Necessity*

The provisions of O 32 R 7, C P Code are by

1939 E D 446=1939 A W R (H C) 557=
1939 A L J 624=AIR 1939 All 607.

—O 32 R 7—*Applicability to agreement of reference to arbitration—Partition suit—Minor defendant—urt—If avoid—*

guardian of a minor enters into any agreement or compromise. An agreement to refer to arbitration is an agreement contemplated by O 32 R 7, C P Code. If, therefore, no application is made by the guardian *ad litem* of a minor defendant in a partition suit for leave to enter into an agreement to refer the matter to arbitration, the failure to obtain leave of the Court for entering into the agreement of reference to arbitration would render all subsequent proceedings including the award and the decree based thereon invalid at the option of the

(*Lall, J*) KEDAR NATH SAHU *v* BASANT LAL SAHU
18 Pat 271=183 I C 422=12 R P 153=

applied to have it set aside, if the award being set aside is not set aside. The award being set aside, the decree made by the Court in terms of the

C P CODE (1908), O 32, R 7

5 B E. 919 = 20 Pat. L T 170 = 1939 P.W.N. 157 =

A I R 1939 Pat 278.

—O. 32 R 7—Arbitration—Reference to—Leave of Court—If to be express

O. 32, R 7, C P Code, does not require any particular formula to be used by the Court in granting leave to a guardian of a minor to enter into an agreement to refer the suit to arbitration. So long as an application is made to the Court for leave and the Court exercises its judicial discretion to permit the guardian to enter

—O. 32, R 7—Reference to arbitration—Minors parties to dispute—Application to Court for order directing arbitrator to file award—Sanction of Court—If necessary.

Where a dispute to which minors are parties is refer-

no objection to the decree the provisions of O. 32, R. 7 are not attracted and the Court is under no necessity to sanction anything as a condition precedent to filing the award and passing a decree upon it. A I R 1918 Bom 123 and 22 Mad. 538, Rel. on. (Lord Williams, J.) RAJ KUMAR v. SHIVA PRASAD GUPTA.

184 I O. 553 = 12 E C 241 = A I R 1939 Cal. 500

—O. 32, R. 7 and S. 141—Reference to arbitration—Subject-matter of proceedings not same—Leave of Court—If necessary.

Neither S 141 nor O. 32, R. 7, C. P. Code, applies to a reference to an arbitration when the subject-matter of the proceedings in Court cannot possibly be said to be the same as covered by the reference to arbitration, and the award is not, therefore, invalid for want of leave of the Court for the reference. WATI DEVI v. JAG

—O. 32, R 7
to arbitration—Leave

Remedy of minor—Revision against order dismissing objections to validity of award—Competency.

A minor or his next friend or guardian may repudiate an agreement including a reference to arbitration, if it has not been sanctioned by the Court. O. 32, R. 7, C. P. Code. But a minor cannot repudiate the award of an arbitrator.

—O. 32 R 7 (2) - Scope—Compromise by guardian without leave—Decree—If void or voidable. See C. P. CODE, O. 32, RR. 5 AND 7 (2).

—O. 32 R 11—Removal of guardian—Duty

Where a Court concerned should another person, as a last resort. (N) UDAI CHAND.

C. P. CODE (1908), O 33, R. 7.

—O 33, R 2 and S 149—Application for leave to sue in forma pauperis—Time for payment of court fee, before rejection—Payment within time—Plaint when treated as filed.

Where prior to the rejection of an application for leave to sue as a pauper, the applicant is granted on his request time for payment of court fee and the court-fee is paid within that time, the plaint is treated as having been filed on the date when the application for leave to sue in forma pauperis was filed and not on the date when the court-fee was actually paid. (Zia ul-Haion and Hamilton, J.J.) LALTA v. AVADH NARESH SINGH.

184 I C 443 = 12 R O 121 = 1939 O.W.N. 920 = 1939 O.L.R. 626 = 1939 A.W.R. (O.C.) 222.

—O. 33, Rr 3 and 4—Court inquiring into pauperism after notice—Jurisdiction to consider if plaintiff discloses cause of action or suit barred.

A Court issuing notice and hearing the case on the question of pauperism under O 33, R. 4, C. P. Code, is not thereby deprived of its jurisdiction to consider under

(c) the questions as to whether the plaintiff discloses cause of action or whether the suit is barred

But the Court should not allow itself to be misled by any evidence which was taken at the enquiry under R. 4 or by anything which has been brought to its notice by the opposite party, which are not to be found either on the face of the proposed plaint or in an admission by the applicant. (Mya Bu and Mackney, J.J.) KARIM v. LAIQ RAM.

1939 Rang L.R. 263 = 184 I C 796 = A.I.R. 1939 Rang 351.

—O 33, R. 5 (e)—Scope—Suit by shela of mahant claiming mahantship—Plaintiff merely tool in hands of backers who stand to derive substantial advantage—Leave to sue or appeal in forma pauperis—Grant of.

The provisions of C. P. Code which provide the machinery of leave to sue or to appeal in forma pauperis are not intended for the purpose of promoting the

mahant in a math may be a pauper and may have no property, but if a suit by him claiming the right of mahantship of the math is really promoted by others

also found that an arrangement cannot be permitted. R. 5 of

Pat L.T. 720 = 1939 P.W.N. 261 = A I R 1939 Pat. 385.

—O. 33, Rr. 7 and 15 and S. 149—Dismissal of pauper application—Permission granted to pay court

sue in forma pauperis—If already refused,

. CODE (1908), O'33, R 8

sented his application *malafide* or with intent to defraud the revenue. Where an application for leave to sue in *forma pauperis* is rejected under O 33 R 7, there is no proceeding before the Court and the plaint filed along with the original application cannot be said to remain in such a case an order granting the applicant permis-

KHEJERALI MOLLA I L R (1933) 2 Cal 68 =
184 I C 345 = 12 R O 224 = 69 C L J 420 =
43 O W N 686 = A I R 1939 Cal 394

— O 33 R 8—Scope and effect of—Pauper suit—Date of filing—Date of application for leave to sue as pauper or date of grant of leave—Limitation Act S 3

Though by reason of O 33 R 8 C P Code, the suit of a pauper can be registered only after the applica-

O P. CODE (1908), O 34 R 1.

— O 33, R 12—Scope of

R 12 of O 33, C P Code is confined in its operation to cases in which the Court has not already *suo motu* passed an order either under R 10 or R 11 of that order (*Iqbal Ahmad and Bajpai JJ*) COLLECTOR OF GORAKHPUR v BUDHU KALWAR

182 I C 337 = 11 E A 654 = 1939 A L J 125 =

R (H C) 82 = A I R 1939 All 327

15—Contrivance and scope—Condition

costs—Mandatory character of—Non-

corpus can affect jurisdiction of Court to entertain subsequent suit—Failure to take objection at initial stage—Effect—Waiver

The provisions of O 33, R 15, C P Code, are mandatory and when failure to comply with the rule is brought to the notice of the Court, the suit must be dismissed if the objection as to the non compliance of the rule has not been waived. The failure to comply with the condition in O 33 R 15, as to prior payment

A I R 1939 Bom 418

— O 33 Rr 10 and 12—Payment to Government—Power of Court to make not made in de-rec—Application by G obtain such order—If competent

The effect of the concluding portion of O 33, R 10, C P Code, is that it not merely declares the right of the Government to recover the court fees but also autho-

complied with, at the initial stage of the trial he

the Court's jurisdiction

UMABAI SHANKAR

41 Bom L R 1269.

imperative character—

Payment of costs only long after filing of suit—Suffici-

ency See C P Code S 149 (1939) M W N 178 =

A I R 1939 Mad 316.

— O 34 R 1—Decree holder attaching mortgaged

ted or not before it at the time to make in favour of Government for payment of in making such an order the Court was entitled in the exercise of its discretion of the parties shall be liable for the court-fees. If no such order is made

— O 33 Rr 10, 11 and 14—Scope of—Powers of Provincial Government aggrieved by order as to payment of court fee

The provisions of Rr 10, 11 and 14 of O 33 C P Code, are mandatory. Though orders under Rr 10 and 11 usually must be passed *suo motu*, R 12 gives the Provincial Government a right to apply, as a precautionary measure for an order as to payment of court fee

Government to appeal against the order passed by the Court as to the calculation or the payment of court fees in the event of being aggrieved by the same. Where the right of appeal is not however exercised by the Provincial Government within the time allowed by law, and the decree of the trial Court had thereby become final it cannot be allowed to be reopened by means of an application for amendment of the decree (*Iqbal Ahmad and Bajpai JJ*) COLLECTOR OF GORAKHPUR v BUDHU KALWAR

182 I C 337 = 11 E A 654 = 1939 A L J 125 = 1939 A W R (H C) 82 = A I R 1939 All 327

redemption within the meaning of O 34 R 1, C P. Code (*Mahomed Noor and Chatterji, JJ*) BAIJU LAL MARWARI v THAKUR PRASAD 180 I C 974 =

11 E P 552 = 5 B E 508 = A I R 1939 Pat 7.

— O 34 R 1—Non-judicial—Death of one of the

mortgagors before final decree—His legal represen-

tative not brought on record—Final decree passed

against deceased mortgagor also—Validity—Right of

redemption is not

as of the owners of

without any negli-

gence or fault on the part of the mortgagee and a decree

is passed on his mortgage such a decree is not a void

decree. It is only the right of redemption of the persons

so left out which is not affected or cut off by the final

decree. Such a mortgagee is entitled to recover his

whole dues from the shares of those persons, who were

parties to the suit in the hypothecated properties.

Where therefore before the passing of the final decree,

one of the mortgagors defendants dies and his legal

representative is not brought on record the mortgagee

having been ignorant of his death, and the final decree is

passed against the deceased mortgagor also such a

C. P. CODE (1908), O. 34, R. 1.

decree is a valid decree against the other mortgagors. They can not impeach the sale in execution of that decree on the ground that the decree was not binding on the legal representative of the deceased mortgagor. Further it is doubtful whether they could raise the question in execution proceedings. (*Mitter and Akundkar, J.J.*) SAKTI NATH ROY CHOUDHURY v. REGISTERED JESSORE UNITED BANK, LTD.

I.L.R. (1939) 1 Cal. 493 = 181 I.C. 786 =

70 C.L.J. 47 = 43 C.W.N. 453 =

A.I.R. 1939 Cal. 409

creditor. (*Bhide, J.*) LALIT
RAI. 41 P.L.R. 629 =

—O. 34, R. 1—Scope—Mortgage suit—Omission to

suit on the mortgage, the failure to bring any one of

not being on record. (*Rouland and Manohar, J.J.*)

—O. 34, R. 4, 6 and S. 48—Compromise mortgage decree—Preliminary and final decree and later a personal decree, if could be passed—Limitation under S. 48—Starting point.

Where a compromise mortgage decree itself makes provision for a preliminary and a final decree, there could be no objection to the passing of a preliminary decree under O. 34, R. 4 and to its being made absolute on the expiry of the time fixed in the compromise. Nor could there be an objection to a personal decree for the balance being subsequently awarded to the decree-holder. Time for purposes of S. 48, C. P. Code, would run from the date of the passing of the final decree. (*1939 A.W.E. (H.C.) 265*)
Hanan and B. BALLABH DAS.

—O. 34, R. 1
to fix the order
decretions.

The Court has under O. 34, R. 4, C. P. Code, the power to direct the order in which the various items of the mortgage decree are to be paid.

C. P. CODE (1908), O. 34, R. 10.

1939 A.W.E. (H.C.) 17 = 1939 A.L.J. 53 =

A.I.R. 1939 All. 314.

—O. 34, R. 4—Order regulating sale of mortgaged property—If appealable. See C. P. CODE, S. 47 AND O. 34, R. 4—APPEAL. I.L.R. (1939) All. 150 =

1939 A.W.E. (H.C.) 17 = A.I.R. 1939 All. 314.

—O. 34, R. 4—Preliminary decree—Subsequent adjustment out of Court—If can be recognised

The terms of a preliminary decree passed according to the provisions of O. 34, R. 4, C. P. Code, as regards

A.I.R. 1939 Lah. 79.

—Appeal from preliminary decree
on to make final decree—Preliminary
on appeal—Effect on final decree

aircruy made.

The Court has jurisdiction to make a final decree during

although the decree is not made out in the proper form in accordance with the provisions of O. 34, C. P. Code, the decree-holder is entitled to realize his decree from the mortgaged property. (*Almond, J.C. and Soofi, J.*) MOTIRAM v. BASHESHA NATH. 183 I.C. 833 =

12 R. Pesh. 18 = A.I.R. 1939 Pesh. 34.

—O. 34, R. 6—Decree under—Executability—Judgment-debtor insolvent. See PROVINCIAL INSOLVENCY ACT, SS. 28 AND 44 1939 A.W.E. (H.C.) 265.

—O. 34, R. 8—Absence of seal on the warrant—Effect on—Validity. See PENAL CODE, S. 225 (d).

1939 Rang. L.R. 445.

—O. 34, R. 10—Scope—Mortgage—Suit for redemption—Costs of suit—Liability for—Mortgagee—Right of to be awarded costs—Mortgagee raising unfounded and frivolous pleas—Effect of—C. P. Code, S. 35—Order for costs—Appeal.

In a suit under O. 34, C. P. Code, the Court is bound

prefer an appeal as to costs to a higher tribunal. A mortgagee who frivolously resists an application under a mortgagor, and contests it on any justification, raising founded pleas, would not only be liable to pay costs. (*Abdur Rahman, J.*)
R. v. RAMASWAMI CH

C P CODE (1908), O 34, R 10

TIAIR 184 I C 83=12 R M 406= Where a lease back by a mortgagee is part of the

AIR -
 —O 34 R
 Rights apart from
 O 34 R 10
 1930 has no app
 prior to name

to bar the attachment and sale of the mortgaged pro
 perty

which the father and son are members (Aing, J)
 VARADARAJAM PILLAI v KRISHNAMURTI PILLAI
 1939 M W N 302=49 L W 411=
 AIR 1939 Mad 436=(1939) 1 M L J 680

—O 34, R 14—Applicability—'Mortgagee'—If
 means holder of subsisting mortgage—
 ing only personal decree against
 attack and sell mortgaged property
 The word 'mortgagee' in R 14 of
 Procedure Code is intended to me
 subsisting and effective mortgage w
 set up by the mortgagee against the p
 be purchaser of the mortgaged property hence where
 in a suit on a mortgage execu
 Hindu family the sons imp
 the mortgagee abandons his
 rests content with a simple
 mortgagor, there is no subsi
 decree and it is not open to
 separate suit for the enforcement of such a decree

CHANDAN DEVI 180 I C 136=1939 O A 255=
 1939 O L E 121=1939 O W N 227=
 12 R O 233=A I R 1939 Oudh 126

—O 34 R 14—Applicability and scope of See
 T P ACT, SS 67 AND 100 AND C P CODE O 34
 R 14 1939 A L J 542

—O 34, R 14—Applicability —Usufructuary
 mortgage providing for redemption at end of one year
 or on fixed date in any succeeding year—Lease by mort
 gagee to mortgagor for one year only executed next day
 —Payment of Kattaknom by lessee to lessor—If one
 and same transaction—Suit for rent under lease—Sale
 of equity of redemption—Bar of.

C P CODE (1908), O 38, R 2

Where a lease back by a mortgagee is part of the

by the lease, and the rent claimed would still be in its
 essence a sum of money due under the mortgage.

J) CHINNAPPAYAN v NARAYANA
 50 L W 677=1939 M W N 1145
 5 R 5—Scope and object—Landlord and
 tenant—Person claiming title under sale deed by land
 lord executed prior to lease—Demand of rent—Inter
 pleader suit by tenant—Maintainability

The object of O 35 R 5 C P Code, is to prevent a
 tenant from compelling his landlord to have his title

to the plaintiff
 be regarded as
 defendant, and
 is therefore not
 V GOVIND v.

11 L W. (1939) Bom 383=
 182 I C 991=12 R B 53=41 Bom L R 460=
 AIR 1939 Bom 249

—O 38 R 2—Surety under for appearance of
 defendant—Return of plaintiff for presentation to proper
 Court for want of jurisdiction in Court—If discharges
 surety—Re presentation of plaintiff in proper Court—
 Surety's liability—If extends to that suit

The return of a plaintiff in suit on the ground that the
 Court has no jurisdiction terminates the litigation and
 the re-presentation of the plaintiff in a different Court in
 effect starts a fresh litigation on the same cause of
 action Where a surety executes a bond undertaking to
 be responsible for the appearance of the defendant in an

C. P. CODE (1908), O 38, R. 7.

Application for arrest of the defendant before judgment.

jurisdiction. It makes no difference that the plaint returned by the small cause side of a Court is re-presented to the original side of the same Court. Since there has been a change in proceedings, that change on the principle of S. 133 of the Contract Act, discharges the surety (*Madanworth, J.*) MOHOMED SHERIFF SAHIB—*Madanworth, J.*

There cannot be valid or effective attachment before judgment of immovable property unless the requirements of O. 21, R. 54, C. P. Code, are satisfied. Although Form No. 5, Appendix F, is the form in which

immovable property although issued in the form prescribed

The question whether a particular property has been attached has to be determined with reference to the writ of attachment. Even if the property is mentioned in the application for attachment before judgment and the order for attachment is made in terms of that application, but if the writ of attachment served by the Civil Court does not mention the property, the property cannot be said to be under attachment and the judgment debtor is not prohibited from transferring it (*Roland and Chatterji, J.*) SADHU PRASAD SAH v SATNARAIN SAH. 182 I.C. 748 = 12 B.P. 62 = 5 B.E. 820 = A.I.E. 1930 Pat 21

O 38, R. 10—Scope—If contract for sale of property—Attachment before judgment—Conveyance executed If void. See C. P. CODE, S. 64. 411

O 39, R. 1—Application under writ—Proceeding for grant of letters of administration—Inherent jurisdiction of High Courts.

Before an application for injunction under O. 39, R. 1, the applicant must show property with respect to which an injunction is prayed for is property in dispute in a suit for the grant of letters of administration that there is any property in dispute regarding title to property, can be taken for probate or letters of administration in such proceeding for an order restraining certain authorities from making payments of money lying with them which are alleged to appertain to estate of deceased and restraining certain persons from withdrawing or receiving payments of the money is not one which can be brought within the scope of O. 39, R. 1. Although the application cannot be brought within the scope of O. 39, R. 1, a chartered High Court is not powerless to grant an injunction otherwise than in accordance with the provisions of O. 39, R. 1 if a proper case is made out. It has an

Y. D. 1939—20

C. P. CODE (1908), O 39, R. 1.

AIR 1939 Cal 642. O. 39, R. 1—Court refusing injunction on previous application—If can go behind its order

Although a Court has refused to issue a temporary injunction on a previous application, it can, if new circumstances arise, go behind that order and make another order if the exigencies of the case require (*Din, J.*) ISHAR DAS v FIRM OF BHAION KJ 41 P.L.R. 823

O 39, R. 1—Defendant firm adopting name of that of plaintiff firm—Temporary injunction—If justified.

Where the defendant firm has adopted a name so similar to that of the plaintiff firm as is likely to cause confusion in the mind of the intending purchasers, the injunction is justified (*Prima facie*) counter-acted, J.)

41 P.L.R. 823

undertaking is forthcoming, injunction should not be granted *ex parte* except in very rare circumstances. (*Stone C. J. and Bose, J.*) MADHO RAO NARAYAN RAO v. YADO RAO TUKARAM 184 I.C. 570 = 12 B.N. 117 = 1939 N.L.J. 483.

O. 39, Rr 1 and 2—Lawful exercise of right—If can be restrained—Mortgagor seeking relief under Agriculturists' Relief Act—Mortgagee suing to enforce mortgage—Latter, if can be restrained from proceeding with his legal remedy.

The lawful exercise of a right vested in a person

property. In such a case the Court in United Provinces would not be restrained from granting an injunction under O. 39, R. 1. (*Prabhu*) PRABHU

A.L.J. 628 =

AIR 1939 All 613.

If can be granted. See COURT FEES ACT (AS AMENDED IN BIHAR AND ORISSA), S. 7 (v) (c) AND SCH. (c), ART. 17. 20 Pat.L.T. 855.

O 39, R. 1—Temporary injunction—Grant of—Necessity to show *prima facie* case—Interference with grant of injunction in retention.

C P. CODE (1908), O 39, R 1

An applicant for a temporary injunction must show that he has a *prima facie* case. Where the Court grants

Application by defendant—Competency

An application under O 39, R 1(a) C P Code can be made on behalf of a defendant who is entitled to come to the Court if any such act as is referred to in the rule is committed by the plaintiff (*Abdur Rahman J*)

SIVAKAMI ACHI v NARAYANA CHETTIAR
1939 M W N 402=49 L W 441=
A I R 1939 Mad. 495=(1939) 1 M L J 519

O 39 R 2—Scope—Suit for declaration and injunction—Temporary injunction—Grant of—Considerations

will be granted if plaintiff has made out a *prima facie* case and the balance of convenience is on his side (*Lobo J*) DALMIA CEMENT LTD v NARAINIDAS

A I R 1939 Sind 256

O 39 R 2—Temporary injunction—Grant of—Principles governing

In a suit for a perpetual injunction a temporary injunction is to be granted or refused on a consideration of the following points (1) Has the plaintiff made out a good *prima facie* case? (2) On which side lies the balance of convenience? A person's title to a plot was based on a deed of conveyance. That deed of conveyance gave him a right of passage to certain nature and dimensions of that passage mentioned in the deed of conveyance. *Prima facie* he was entitled to the passage as it existed of conveyance, on the date of the conveyance was a passage which connected his the road and ran between two compound walls. That passage was 20 feet wide. The defendant started building operations by which he was encroaching upon the passage to the extent of five feet.

Held, that the owner of the plot had every right to say that having made out a *prima facie* case he was entitled to a temporary injunction (*Lobo J*) BRIJ LAL JAGANNATH v J R SUKIA 179 I C 626=

11 R S 143=A I R 1939 Sind 17

O 39 R 4—Order on application to set aside ex parte injunction—Appealability—Test.

order appealable (*Stone C J and Bose, J*) MADHO RAO NARAYANRAO v VADO RAO TUKARAM

184 I C 570=12 R N 117=1939 N L J 483

O 40, R 1—Appointment of receiver—Equitable execution—Considerations. See C P CODE S 51 AND O 21 R 11 AND O 40, R 1 1939 O W N 206

O 40 R 1—Mortgage—simple—Suit to enforce—Receiver—Power of Court to appoint—Interest, rates and taxes in arrears—If sufficient ground for appointment of receiver

C P CODE (1908) O 40, R 1

The Court in a suit on a simple mortgage has jurisdiction to appoint a receiver of the mortgaged property

I L R (1939) Bom 82=179 I C 821=
11 R B 265=40 Bom L R 1226=
A I R 1939 Bom 54

O 40 R 1—Mortgage suit—Suit on simple mortgage—Appointment of receiver—Power of Court

The Court undoubtedly has jurisdiction to appoint a receiver in a simple mortgage suit but whether it will do so must depend upon what is just and convenient in each particular case having regard to the reason for which he is appointed, to the precise nature of the security in the particular contract whereby a simple

has been created and bearing in mind the imposed by sub rule (2) of O 40 R 1,

The fact that interest on the mortgage debt is in arrears, or substantially in arrears, can be a factor in deciding whether a receiver appointed the fact that the security is

likely for any reason to become insufficient may be another factor, but the governing words of the rule are whether it is just and convenient and in deciding this matter due weight must be given to all relevant considerations including those mentioned in sub rule (2) of O 40 R 1. It can never be just and convenient to appoint a receiver for the sole purpose of taking possession of rents and profits unless they have been expressly made part of the security for the debt by the instrument creating the mortgage even if having done so the Court could put the receiver into possession.

B U J—A receiver can be appointed in a simple

O 40, R 1—Receiver—Secret agreement with judgment debtor—Fraud on Court—Enforceability

against the judgment debtor declared a charge on certain properties and lien on some insurance policies but did not provide interest on the decretal amount. Decreeholder was appointed as receiver to take charge of the properties and to collect insurance money. In course

Companies made an agreement with the judgment debtor after requested the receiver to pay more time and in the decretal amount with interest. Receiver accepted the

agreement but did not communicate it to the Court. After the money was realized and paid into Court the decree-holder receiver asked to be allowed to deduct interest as per agreement. This being disallowed he filed a suit to recover the amount of interest on the basis of the agreement.

Held that as under the agreement, the receiver undoubtedly got something more by way of interest to which he was not entitled under the decree it was his duty to report the agreement to the Court and get it

O. P. CODE (1908), O. 40, R. 1.

ratified. As the agreement was kept from the knowledge of Court it amounted to fraud on Court. The agreement thus being not enforceable at law, claim for interest could not be sustained. (*Mostly, J.*) A U.U. R. N. CHETTIAR FIRM v. SAW EU HUEKE

183 I.C. 868 = 12 R.R. 117 =

A.I.R. 1939 Rang. 217.

—O 40, R. 1—Rights of parties decided by trial Court—Property if in medio—Receiver if can be appointed pending appeal.

Where during the course of trial a receiver pointed and a decision is given by that Court a rights of parties, the property can no longer be in medio and as such there is no justification appointment of a receiver pending appeal.

(*Hasan and York, J.J.*) BISHESHAR SINGH v JADU NATH SINGH 179 I.C. 245 = 11 R.O. 154 =

1939 A.W.R. (C.C.) 21 = 1939 O.W.N. 69 =

1939 O.A. 113 = 1939 O.L.R. 6 =

A.I.R. 1939 Oudh 94.

—O 40, R. 1—Rights of parties decided by trial Court—Receiver if can be appointed in pending appeal.

When there has been a decision on the merits deciding the rights of the parties in the respective properties concerned, the property cannot be said to be any longer 'in medio'. A receiver cannot be appointed where it would have the result of disturbing the possession of the

Col. 310-2nd Case.

Read O. 40, R. 1 (2) for O. 41, R. 1 (2).

183 I.C. 16 = 12 R.O. 16 = 1939 O.A. 544 =

1939 O.L.R. 464 = 1939 A.W.R. (C.C.) 88 =

A.I.R. 1939 Oudh 229.

—O 41, R. 1—Appeal improperly presented admitted by Court—Power to dismiss it at later stage.

Per *Sharpe, J.*—If a memorandum of appeal had been improperly presented by one

and the appeal was presented the day

Apprentice practitioner presenting memorandum with out signature and permission of senior counsel.

Where the memorandum of appeal was signed only by a newly enrolled practitioner who was working as an apprentice with the senior counsel engaged by the appellant and the memorandum was presented by the apprentice without the signature and permission of the senior counsel.

Held, that there was no proper memorandum of appeal (*Bhude*)

GOBIND RAM 179 I.C.

41 P.L.R. 327 =

—O 41, R. 1—Dispensing with copy of judgment appealed against—Written order—If necessary.

Under O 41, R. 1, C. P. Code, may, in a fit case dispense with

ment appealed against. The rule Court must record an order dispensing

The absence of a record therefore necessarily show that no may be presumed from the circum

the dispensation had been granted.

1939 O.W.N. 152 = 1939 O.A. 253.

—O 41, R. 10 (2) and R. 17—Applicability—

1939 O.W.N. 152 = 1939 O.A. 253.

—O 41, R. 10 (2) and R. 17—Applicability—

1939 O.W.N. 152 = 1939 O.A. 253.

O. P. CODE (1908), O. 41, R. 10.

CHANDRA NAG v. RATI KANTA. 43 C.W.N. 1139 =

A.I.R. 1939 Cal. 711.

—O 41, R. 1—Scope—Order under S 47, C. P. Code—Appeals by same party and against same respondent—Copy of order filed in one appeal only—Sufficiency.

O 41, R. 1, C. P. Code, does not expressly require that a copy of an order which has the force of a decree but which is not a decree shall be filed with the memorandum of appeal.

Where in one of the appeals, the appellant copy of the order may be

There is no reason why the appellant should be obliged to file a copy of the judgment which is already on the record in the analogous appeal and which is available for use in both the appeals. (*Agarwala, J.*) BODH NARAIN MAHTON v. JAIHORI MAHTON 20 Pat.L.T. 801.

—O 41, R. 1 (2)—Construction—'Whom any party to the suit has not a present right to remove'—Meaning and effect of.

O 41, R. 1 (2) is an enactment for the benefit of third parties and means that the wide words of sub rule (1) of O 41, R. 1 are not to be construed to justify the Court in removing from possession or custody of

got a good title to such t the parties to the suit.

the suit has not a present in whom no party to the sue. The provision is ex

abundant cautela. (*Beaumont, C.J. and Sen, J.*) DAMODAR v. RADHABAI, I.L.R. (1939) Bom. 82 =

179 I.C. 821 = 11 R.R. 265 = 40 Bom. L.R. 1266 =

A.I.R. 1939 Bom. 54.

—O 41, R. 5—Stay order—When comes to an end.

A stay order is automatically vacated the moment the

1939 Nag 107.

Court to stay

P. Code, the f sale on such

limit to the but it has no

(*Burn and Stodart, J.J.*) RUKMANI ANNAL v. SUBRAMANIA SASTRIGAL. 1939 M.W.N. 1154 = 60 L.W. 645.

—O 41, R. 10—Security for costs—More fact of appeal being in forma pauperis—If a sufficient ground.

It is an established rule of law that poverty is no ground for demanding security from an appellant, so

1939 O.W.N. 152 = 1939 O.A. 253.

—O 41, R. 10 (2) and R. 17—Applicability—

1939 O.W.N. 152 = 1939 O.A. 253.

—O 41, R. 10 (2) and R. 17—Applicability—

1939 O.W.N. 152 = 1939 O.A. 253.

—O 41, R. 10 (2) and R. 17—Applicability—

1939 O.W.N. 152 = 1939 O.A. 253.

—O 41, R. 10 (2) and R. 17—Applicability—

1939 O.W.N. 152 = 1939 O.A. 253.

—O 41, R. 10 (2) and R. 17—Applicability—

1939 O.W.N. 152 = 1939 O.A. 253.

—O 41, R. 10 (2) and R. 17—Applicability—

1939 O.W.N. 152 = 1939 O.A. 253.

C. P. CODE (1908), O 41, R. 10.

restore it would not come under R. 19 of O 41

it would not be appealable (*Ismail, J.*)

KUER v SRIDHAR MISIR.

1939 A W R (H C) 739=1939 A L J.

A I R 1939 All 733

—O 41, R 10(2)—*Rejection of appeal—If appealable*

An order rejecting an appeal under O 41 R 10 (2), C P Code for failure to furnish security for the costs of the appeal is not a final order.

1939 A W R (H C) 739=1939 A L J 998=

A I R 1939 All 733

—O 41 R 17—*Dismissal of appeal—If for default—Test—Appearance, meaning of.*

Where an appeal is adjourned for a short while to

with costs, it is clearly an order dismissing the appeal for default. Appearance in the legal sense means that a party or somebody on his behalf either expressly in words or by his conduct demands an adjudication from the Court (*Alliop, J.*) ALLAH BUX v BUDHA

183 IC 453=12 R A 141=

1939 A W R (H C) 739=1939 A L J 998=

—O 41 R 19 and S 161—*Dismissal for default—Delay in filing application for restoration—Condensation—Powers of Court*

Where an appeal has been dismissed for default, an

—O. 41, R. 19—*Sufficient cause—Restoration of appeal.*

Where an appeal which was fixed certain date as last on the cause list earlier part of the day and dismissed within a few minutes of the dismissal for restoration was made, supported which it was stated that the appellant sent as he was attending another case at the time, and that his pleader Court room in the earlier part of the day that the case was last on the list, v

C. P. CODE (1908), O 41, R. 22.

join S as respondent but obviously after the appeal against S was time barred:

Held, that the appeal was incompetent because the prayer of G in the second appeal being the restoration of the trial Court's decree he could not succeed in the appeal and since the decree was not altered I R 1927 P.

J. (Mackney,

THAN HMO.

182 IC 1005=12 R R 43=A I R 1939 Rang 213.

—O 41, R 20—*Contesting respondent added in time—Party supporting appellant—If can be added after limitation*

Where the real contesting respondent in the case is a party who is through- and is interested in the added as a proper party the period of limitation

has expired (*Bhude J.*) RAM RATTAN v FAZAL HAQ.

41 P L R 816=A I R 1939 Lah 346.

—O 41, R 20—*Omission of a party's name from decret—Not noticed in appeal—If can be added in second appeal.*

Where the Zamindars were left out from the decree

ing of appeal—*Grounds for setting aside ex parte decision against him*

An applicant under O. 41, R 21, C. P. Code, who admits receipt of notice is obliged like an applicant under O. 41, R 21, C. P. Code, to be entered by sufficient

NATESA IYER v.

60 L W. 515=

939) 2 M L J. 568.

incompetent—Cross

objections—*If can be entertained.*

To get a decree by them the co-shares alleged that been ce of ason laim pay- trial) iff's a their pur dents of the se set

C. P. CODE (1908), O. 41, R. 22.

Held, that the claim to relief was founded upon different grounds from those upon which the trial Court's decree proceeded, and upon principles different from those which underlay the relief given by the decree. The case came clearly within the condition imposed by the concluding words of sub-rule (1) of R. 22, "provided he has filed such objections in the Appellate Court, etc., etc." and R. 33 could not rightly be used in such a case so as to abrogate the important condition which prevents an independent appeal from being in effect brought without any notice of the grounds of appeal being given to the parties who succeeded in the Court below. (*Sir George Rankin.*)

C. P. CODE (1908) O. 41, R. 27.

reopened when the case comes back, from the lower Court to a Court of co-ordinate jurisdiction in appeal against the decision after remand. But if at the time of remand no final decision is given on a point though some observations only are made in respect of it, it is open to another Bench when finally determining the case to come to its own conclusions on it (*Mahomed Noor and Dharle, J.J.*) BARABONI COAL CONCERN, LTD. v. RAM CHANDRA MARWARI. 5 B.R. 664 = 181 I.C. 721 = 11 B.P. 626 = 20 Pat L.T. 685 = A.I.R. 1939 Pat 580.

—O. 41, R. 23—Order of remand—When not justified.

A case can be remanded under O. 41, R. 23, C. P. Court from whose decree an appeal filed of the suit upon a preliminary Court has considered and determined necessary for the disposal of the case on merits, and further there is sufficient material existing on the file on which the appellate Court can itself dispose of the appeal filed before it, an order of remand is not justified. (*Abdul Qayoom, C.J., and Kichlu, J.*) SOLA SHEIKH v. SWAMI RESHA KOUL. 41 P.L.E. J. & K. 43.

—O. 41, R. 23 (Contd.)—Order of remand—

before
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quired
The
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must have been a decree and there must have been

1939 O.A. 213 = 1939 O.L.E. 128 =
1939 O.W.N. 246 = 11 R.O. 244 =

1939 A.W.R. (H.C.) 491 = A.I.R. 1939 All. 663.

—O. 41, R. 27—Duty of Court.

—O. 41, R. 21—Further evidence—When should

1939 A.W.R. (H.C.) 491 = A.I.R. 1939 All. 663.

1939 A.W.R. (H.C.) 491 = A.I.R. 1939 All. 663.

appeal—Subsequent notice fixing date of hearing—Time for filing of cross-objections—Starting point.

Where a notice was issued to the respondents merely informing them that an appeal had been preferred in the case by the other side, so that they might appear to take

—O. 41, R. 23—Applicability—Conditions for remand—"Preliminary point"—

The only meaning that can be given to the words "preliminary point" in O. 41 is any point the decision of which is required for the full hearing of the suit only on the strength of a finding the questions of fact have not been decided by the Court. Reason of that finding, the suit must be deemed to have

O. 41, R. 23 and as such it can be nothing other than a remand made in the exercise of the inherent powers of the Court. An order of remand made in the exercise

1939 A.W.R. (H.C.) 491 = A.I.R. 1939 All. 663.

—O. 41, R. 27—Duty of Court.

—O. 41, R. 21—Further evidence—When should

1939 A.W.R. (H.C.) 491 = A.I.R. 1939 All. 663.

C. P. CODE (1908), O. 41, R. 27.

examined by the Court. It is no part of the duty of the Court nor is it necessary for the Court to act the part of counsel for either of the further evidence on a point already been introduced is a defence to be adduced. Such for the Court to pronounce must pronounce its decision. Rule 27 of O. 41 is to be applied considering the case, to grasp the significance for decision of the case which has been brought or which which shows that its true significance has not been understood. In such a case it is necessary that further to elucidate the point.

NYEIN v MAUNG THA S
11 R.R.

—O. 41, R. 27—Non examination of witness by trial Court on ground of his being counsel in case—Appellate Court recording his evidence—Propriety.

Where a Barrister who was an important witness to the proceedings at the time of registration of the adoption deed, was tendered as a witness at the trial but refused by the trial judge on the ground that he was engaged as counsel in the case, the Appellate Court

C. P. CODE (1908), O. 41, R. 33.

J.) PARAWA SANGAPPA v. RAYANGODA.
41 Bom L.R. 841=A.I.R. 1939 Bom. 401.

the reasons for
d, result in the
(Agarwala, J.)
6 C.L.T. 32.

—O. 41, R. 33—Alteration of decree in favour of

(Agarwala, J.) **HARI MOHAN OJHA v. BANSDHAJ PATHAK** 181 I.C. 137=12 R.P. 220=6 B.R. 23

—O. 41, R. 33—Scope—Party to suit not joined in appeal found not to be necessary party to appeal—Power of appellate Court to pass decree in his favour.

R. 33 of O. 41 should not be exercised so as to deprive a party of a valuable right which he might have acquired in consequence of the opposite party's failure to

—O. 41, R. 27—Non production in lower Court—

—O. 41, R. 27—Non production in lower Court—Additional evidence—Admissibility.

Where the additional evidence which a party wishes to produce was in his possession at the time when he gave evidence in the trial Court and no assigned as to why this evidence was not he cannot be allowed to produce it in Court. (*Tek Chand, J.*) **PURAN CHAND v. BAKSH** 181 I.C. 164=12 R.L. 173=41 P.L.R. 388=A.I.R. 1939 Lah. 265

—O. 41 R. 27 and 29—Scope—Additional evidence—Admission of—Procedure—Recording of rea

—O. 41 R. 33—Scope—Respondent not filing to attack findings

ode, contemplates modification appellate Court at the instance of to scope where the respondents in the decree of the lower Court

or when the decree under appeal is not modified in appeal. It is not open to a respondent, who has not preferred any memorandum of cross objections or any appeal, to attack a finding which if reversed would

—O. 41, R. 33—Scope—Suit dismissed—Appeal by one defendant—Cross-objection by non appealing plaintiff—Maintainability

Where an action by a person is dismissed, the appellate Court has power to grant him but has filed cross-

rests of a party im-

C. P. CODE (1908), O. 41, R. 33.

pleaded in the trial Court but not impleaded in appeal. If any such order is passed it cannot operate as *res judicata*. (*Mukta, S. M. and Harter, J. M.*) MAHABIR SINGH v. BAIJ NATH SINGH.

1939 A.W.R. (B.R.) 102=1939 R.D. 8
—O 41, R. 33—*Suit dismissed against one defendant—No appeal or cross objection filed against this decision—Relief against such defendant in second appeal—If can be granted.*

Where the plaintiff's suit against several defendants is dismissed as against one of them and the plaintiff does not prefer any appeal or cross-objection in the lower appellate Court against the trial Court's decision nor is the point taken as a ground of second appeal to the High Court, it is not proper to give the plaintiff any relief under O. 41, R. 33 against such defendant against whom the suit was dismissed. (*Mukherjee and Rexburgh, J.J.*) SURENDRA NATH GHOSH v. SURENDRA NATH JORDAR. A.I.R. 1939 C. 500

—O. 42 R. 1 (All)—If affects second under Agra Tenancy Act. See AGRA TENANCY S. 264 AND SCH. II—LIST 2, SERIAL 14 AND CODE, O. 42 R. 1 (All) 1939 A.L.

—O. 43 R. 1—Order by Court which decree refusing to amend decree under S. 151—Appeal, See C. P. CODE, S. 47. 41 Bom L.R. 1170

—O. 43, R. 1 (j)—*Construction and scope—Refusing to set aside a sale—Meaning of—Court declining to accept bond offering immovable property as security instead of cash deposit—Rejection of application to set aside sale—Applicability*

Code, although the order may have been passed even before the petition is admitted. An order rejecting the petition on the ground that the petitioner tenders a draft bond offering immovable property as security

C. P. CODE (1908), O. 43, R. 1.

O. 43, R. 1 (j) (*Dassi, J.C. and Tyabji, J.*) UTTAM CHAND v. DEVDITTARAM. I.L.R. (1939) Kar 417=180 I.C. 669=11 R.S. 189=A.I.R. 1939 Sind 62.

—O. 43, R. 1 (k)—*Applicability—Appeal—Abatement—Order refusing to set aside—Appealability.*

O. 43, R. 1 (k), C. P. Code, applies not only to suit but also to appeals. Having regard to the provisions of O. 22, R. 11, C. P. Code, a suit, so far as abatement is concerned, includes an appeal, and consequently an appeal lies against an order refusing to set aside an abatement of an appeal (*Rowlan and Chatterjee, J.J.*) RAM RAN VIJAYA PRASAD SINGH v. MADHO TURHA. 20 Pat L.T. 715=1939 P.W.N. 680=A.I.R. 1939 Pat. 623.

—O. 43, R. 1 (m)—*Order dismissing petition of compromise for default—Appeal*

It is doubtful whether an appeal lies under O. 43, R. 1 (m), C. P. Code, from an order dismissing a petition

—O. 43, R. 1 (u)—*Applicability—Remand under inherent powers*

An order of remand made in the exercise of the inherent powers of the Court is not appealable under the provisions of O. 43, R. 1 (*Thomas, C.J. and Yorke, J.*)

—O. 43, R. 1 (u)—*Order of remand in appeal under S. 104—Appeal.*

No appeal lies from an order of remand passed in an appeal submitted under S. 104, read with O. 43, (*Din Mohammad, J.*) TARA CHAND v. MANKU LAL RAM CHAND. 182 I.C. 896=12 R.L. 91=A.I.R. 1939 Lah 65.

—O. 43, R. 1 (w)—*Order granting review—Appeal—Grounds*

out jurisdiction if on this ground alone, it sets aside an order of the lower Court granting a review 7 Rang 187, Foll. (*Mya Bu and Sharpe, J.J.*) MA LON v. MA MYA MAY. 179 I.C. 946=11 B.R. 363=A.I.R. 1939 Rang 59.

—O. 43, R. 1 (w)—*Order granting review—Appeal—Grounds*

to the execution of within the mean-ore an appeal lies sequently it can be attacked upon any ground which the appellant chooses to take, and not merely on the limited grounds mention-

Where an order pass-aside sale is set aside in, he against the order in

—O. 43 R. 1 (j)—*Order dismissing application under O. 21, R. 90—Appeal—Limitation—Starting point.*

An order dismissing an application to set aside a sale under O. 21, R. 90, C. P. Code, being itself an order refusing to set aside the sale, 1 (j) would lie against it and confirmation of the sale plus limitation for the appeal was the order dismissing the application and date confirming the sale. (*Mukherjee,* CHARAN NARASUDRA v. MAHENDRA CH. 43 C. 43

—O. 43, R. 1 (j)—*Second appeal—Order setting aside execution sale—Reversal on appeal—Second appeal—Competency*

Where an order pass-aside sale is set aside in, he against the order in

G P CODE 1933, O 47, R 1

And where J. ... 47 R 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

O 47, R 2 - Mitthala - Name of ...

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154 A W 112 (38 R) 254

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C P CODE 1933, Sch II para 14

Sch II para 14 - ...

O 47 R 1 - ...

In the ...

43 LW 430 - 1933 M W N 406 - A.I.R. 1933 Mad 289

O 47 R 7 - Appeal - Order granting review on ground of error apparent on face of record - Appealability

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C. P. CODE (1908), O. 41, R. 33.

pleaded in the trial Court but not impleaded in appeal. If any such order is passed it cannot operate as *res judicata*. (*Mukta, S. M. and Harter, J. M.*) MAHABIR SINGH v. BAIJI NATH SINGH.

1939 A.W.R. (B.E.) 102 = 1939 R.D. 8

—O 41, R 33—*Suit dismissed against one defendant—No appeal or cross objection filed against this decision—Relief against such defendant in second appeal—If can be granted.*

Where the plaintiff's suit against several defendants is dismissed as against one of them and the plaintiff does not prefer any appeal or cross-objection in the lower appellate Court against the trial Court's decision nor is the point taken as a ground of second appeal to the High Court, it is not proper to give the plaintiff any relief under O 41, R. 33 against such defendant against whom the suit was dismissed. (*Mukherjee and Roxburgh, J.J.*) SURENDRA NATH GHOSH v. SURENDRA NATH JORDAR. A.I.R. 1939

—O 42 R 1 (All)—If affects *seco* under Agra Tenancy Act *See AGRA TENANCY ACT, S. 264 AND SCH II—LIST 2, SERIAL 14*. CODE, O. 42, R 1 (All). 1939 A.L.J. 592

—O 43, R 1—Order by Court which passed decree refusing to amend decree under S 151—Appeal. *See C. P. CODE, S. 47.* 41 BOM.L.R. 1170.

—O 43, R. 1 (j)—*Construction and scope—“Refusing to set aside a sale”—Meaning of—Court declining to accept bond offering immovable property as security instead of cash deposit—Rejection of application to set aside sale—Appraisability*

So far as applications under O. 21, R. 90, C. P. Code, are concerned, there is no distinction between an order on the application and an order declining to entertain the application. A rejection of the application to have a sale set aside is not any the less a refusal to set aside the sale within the meaning of O. 43, R. 1 (j). C. P. Code, although the order may have been passed even before the petition is admitted. An order rejecting the petition on the ground that the petitioner tenders a draft bond offering immovable property as security

C. P. CODE (1908), O. 43, R. 1.

O. 43, R. 1 (j). (*Davis, J.C. and Tyabji, J.*) UTTAMCHAND v. DEVDITTARAM. I.L.R. (1939) Kar. 417 = 180 I.C. 669 = 11 R.S. 189 = A.I.R. 1939 Sind. 62.

—O 43, R. 1 (k)—*Applicability—Appeal—Abatement—Order refusing to set aside—Appraisability.*

O 43, R. 1 (k), C. P. Code, applies not only to suit but also to appeals. Having regard to the provisions of O. 22, R. 11, C. P. Code, a suit, so far as abatement is concerned, includes an appeal, and consequently an appeal lies against an order refusing to set aside an abatement of an appeal. (*Routland and Chatterjee, J.J.*) RAM RAN VIJAYA PRASAD SINGH v. MADHO TURHA. 20 Pat L.T. 715 = 1939 P.W.N. 680 = A.I.R. 1939 Pat. 623.

—O 43, R. 1 (m)—*Order dismissing petition of compromise for default—Appeal.*

It is doubtful whether an appeal lies under O. 43, R. 1 (m), C. P. Code, from an order dismissing a petition

there. (*Derbyshire, C.J. and Nasim Ali, J.*) SURAJMALL KESHAN v. R. A. WOOD. 43 O.W.N. 1113.

—O 43, R. 1 (u)—*Applicability—Remand under inherent powers.*

An order of remand made in the exercise of the inherent powers of the Court is not appealable under the provisions of O. 43, R. 1. (*Thomas, C.J. and Yorke, J.*)

—O 43, R. 1 (u)—*Order of remand in appeal under S 104—Appeal.*

No appeal lies from an order of remand passed in an appeal submitted under S 104, read with O. 43. (*Din Mohammad, J.*) TARA CHAND v. MANKU LAL RAM CHAND. 182 I.C. 896 = 12 R.L. 91 = A.I.R. 1939 Lah. 65.

—O 43, R. 1 (w)—*Order granting review—Adversely—Grounds*

with the provisions of O 47, R 7 (1), bearing in mind the provisions of O. 47, application for review, it cannot be said the provisions of O 47, R. 4 merely

MAY. 179 I.C. 946 = 11 R.R. 363 = A.I.R. 1939 Rang. 50

determination of a question relating to the execution of

69 C.L.J. 573 = 43 C.W.N. 913 = A.I.R.

04 (4) AND 94.

—O 43, R. 1 under O 21, R. point.

An order dismissing an application to set aside a sale under O. 21, R. 90, C. P. Code, refusing to set aside the sale, I (j) would lie against it and confirmation of the sale as a limitation for the appeal would be the order dismissing the application and not from the

he against the order in appeal made by a Judge under

O P CODE (1908), 43 E 1

—O 43, E 1 (w)—Scope—If subject to O 47, R 7
—Order granting review for sufficient ground—
Appellability

An appeal under O 43, R 1 (w), C P Code
tricted by and is subject to the provisions of O 47
C P Code, and an order granting an applicatio
review can be objected to only on the three grounds
specified in O 47, R 7 and no other. An order grant-
ing a review merely for sufficient ground is not appeal-
able (*Kewland and Catterji, JJ*) **HARBALLAH**
PRASAD v JAGBALLAVI PRASAD 18 Pat 777—
20 Pat LT 859—1939 P W N 719

—O 44 E 1 (Allahabad)—Proceedings under
—Respondent entitled to be heard on the merits of
the appeal

A respondent has no right whatever to be heard on
the merits of the appeal at any sit
under O 44 R 1 C P Code
as to the pauperism of the ap
Verma, JJ) **RAM KAILASH**
SARAN 1939

1939 A L J 936—A I R 1939 All 715

—O 44 E 1 Proviso—Rejection of application
—Court if bound to hear arguments prior to

All that an appellate Court is required to do under
O 44 R 1 Proviso C P Code is that it should peruse
the application for leave to appeal as a paper and the
judgment and decree appealed from. It cannot be held
that an appellate Court must hear arguments in support

1938 OWN 1248

—O 45 E 4—Applicability—Conditions—Two
different suits having but one common question between
them but having other different questions also—Joint
trial—Separate judgments—Appeals—Joint hearing
and single judgment—Consolidation for purposes of
appeal to Privy Council—Permissibility—Discretion
of Court

O 45 R 4, C P Code requires that the questions
for determination in the several suits sought to be con-
solidated shall substantially be the same. The fact that
there is one common question does not entitle an appli-
cant to an order for consolidation when there are other
questions which are not common. The basis of an
order for consolidation must be that the several suits

dating the two appeals. Totalling the values placed on
the respective claims the suits, if consolidated would
comply with the condition with regard to value.

Held, that the case did not come within O 45 R 4,
C P Code, and there could therefore be no order for
consolidation.

Held, further, that the Court under the rule had a
discretion to consolidate or not and was not
to grant an order of consolidation as of course
C J and Somayya, JJ) **HAIRANACAYYA CH**

—O 45, R 7—Extension of time for furnishing
security—Power of High Court—Privy Council Rules

O P CODE (1908) O 45, E 7.

R 9—C. P. Code, O 52, R 66 (Rangoon)

The High Court has power for cogent reasons to

1939 Rang L R 668 (F B)

—O 45 E 7—Scope—Powers of Court—Appli-
cation by solicitor of successful respondent for payment
of deposit towards fees due from respondent—Powers of
High Court to order. See SOLICITOR AND CLIENT—
AGREEMENT FOR REDUCED FEE 41 Bom L R 410

—O 45 E 7—Scope—Privy Council Rules R 9
—Extension of time for security—Discretion of Court
—Limits to power of Court

of time is strictly limited and it would require a strong
case to induce the Court to hold that justice requires an
extension of time beyond the limit specified in that rule
(*Beaumont, C J and Wadia, J*) **SHANKAR V. PUTTA-**
BAI 1 L R (1939) Bom 556—41 Bom L R 947—
A I R 1939 Bom 483

—O 45 R 7 and P O Rules R 9—Time for
furnishing security—Power of High Court to extend.

C P Code beyond the periods mentioned therein
The provisions of R 9 are wide and general in their
terms. The discretion conferred should be exercised
only in exceptional circumstances and where an exten-
sion is clearly supported by considerations of justice and
equity (*Thom C J, Rachpal Singh, Colletier,*
Allsop and Ganga Nath, JJ) **BISHNATH SINGH v.**
COLLECTOR OF BENARES

I L R (1939) All 540—1939 O L R 291—
181 C 378—11 R A 560—1939 A L J 278—
1939 A W R (H O) 322—1939 O W N 366—
A I R 1939 All 293 (F B)

—O 45, E 7, proviso—Application for permis-
sion to furnish security otherwise than in cash or
Government securities—Time for making

Under O 45 R 7, C P Code, an application for

(1939) 2 M L J 521

—O 45 E 7 (1)—As applied to Federal Court
appeals—Date of the decree—Meaning of

The phrase "date of the decree" in O 45, R 7 (1) C.
P Code, as applicable to Federal Court appeals means
the date which the decree bears or the date upon which
the judgment was pronounced. The starting point of

1939 P W N 807—20 Pat LT 905—
A I R 1939 Pat 667 (F B)

—(as amended in 1920), O 45 R 7 (1)—As
applied to Federal Court appeals—Time for deposit of
printing charges—Powers of High Court—Sufficient

C. P. CODE (1908), O. 47.

grounds for extension—Order in Council of 1920, R. 9—Applicability to Federal Court appeals.

Harris, C. J. and Fazl Ali, J.—Under O. 45, R. 7 (1), C. P. Code, as amended by Act XXIV of 1920, the printing costs have normally to be deposited within ninety days. An extension of time may be granted for deposit of printing charges after the expiry of 90 days upon cause being shown, but such extension of time cannot exceed 60 days, and if this further period of 60 days has elapsed, the Court has no power under the rule as it stands to grant further time. The words are mandatory and limit the discretion of the Court. So far as appeals to His Majesty in Council are concerned in view of the language of R. 9 of the Order in Council of 9th February, 1920, the High Court has power in proper cases to extend time for making deposits of printing costs beyond the limits fixed by O. 45, R. 7 of the Code of Civil Procedure. The word "Code" in O. 9 R. 1 of the Federal Court Rules means the Code as amended or modified by any Order in Council and in particular as modified and adapted by the Government of India (Adaptation of Indian Laws) Order, 1937. Since O. 45, R. 7, C. P. Code, has been modified by Order in Council of 9th February, 1920, power is also given to the Court in relation to

C. P. CODE (1908), O. 47, R. 1

If owing to a misapprehension the counsel for the respondent to an appeal does not urge all his arguments in support of the finding of the trial Court in favour of his client, and an erroneous impression is created in the mind of the judge that counsel had no arguments to urge to meet all the points raised by the appellant's counsel, that would be analogous enough to an error apparent on the face of the record to be a sufficient reason for review under O. 47, R. 1, C. P. Code. There is a power of review in cases of mistake of counsel or mistake of the judge leading to errors in the judgment though not apparent on the face of the record, (*Patanjali Sastri, J.*) *GOVINDACHETTIAR v. VARA DAPPA CHETTIAR*, 50 L. W. 568—1939 M. W. N. 1080 = (1939) 2 M. L. J. 809.

—O. 47, R. 1—Applicability—New and important matter or evidence—Error or mistake apparent on face of the record—Meaning of—Appeal—Dismissal for failure to file appellant's list—Application for restoration—If one for review—Power of Court. See C. P. CODE, S. 151. 1939 P. W. N. 832—A. I. R. 1939 Pat. 678 (F. B.).

—O. 47, R. 1—Error apparent on face of record—Meaning of.

A mistake of law is not sufficient in itself to grant a

misunderstanding as to what business would be transacted in the office of the Court during the vacation, and where the appellant is under the impression that it would be enough if the money is deposited on the reopening

issued as to what the Court will or will not do during the vacation, a litigant cannot be blamed if he honestly believes that he could deposit the money on the reopening day of the Court.

Agarwala, J.—Neither R. 9, nor any other rule of the

Court itself is closed for judicial business will not

—O. 47—Construction—Power of succeeding Judge to review order of predecessor—Limits—S. 151—Scope. See C. P. CODE, S. 151. I. L. R. (1939) Kar. 330.

—O. 47, R. 1—"Any other sufficient reason"—Misapprehension of counsel leading to omission to argue certain points in appeal—Erroneous impression in Judge's mind—If ground for review of judgment.

Y. D. 1939—21

I. L. R. 200 = A. I. R. 1939 Sind. 137.

—O. 47, R. 1—Ground for review—Decision wrong on merits.

The words "any other sufficient cause" in R. 1 of

A. I. R. 1939 Lah. 480.

—O. 47, R. 1—Ground for review—Different views on question of law possible.

Where the utmost that could be said is that a different view on certain questions of law is possible, and

—O. 47, R. 1—Ground for review—Erroneous view of law—Refusal to consider finding of fact.

Where a Judge erroneously came to a conclusion that he was bound by the finding of facts of the lower Court and which was tantamount to a refusal to consider the question of fact,

Held, that there was sufficient cause for a review. (*Asha Bu and Sharfe, J.*) MA LON v. MA MYA MAY 179 I. C. 946 = 11 B. R. 363—A. I. R. 1939 Rang. 59.

—O. 47, R. 1—Ground for review—Failure of Counsel to lay apposite law.

The mere failure of a Counsel to lay apposite law before the Court is by itself no ground for a review under O. 47, R. 1, C. P. Code. (*Abdul Qay*

C. P. CODE (1908) O 47, R 1

and *Waur J*) BHAGAT RADHA KISHAN v LLOYDS BANK SRINAGAR. 41 P L R J. & K 89

—O 47, R 1—*Mistake—Name of necessary party wrongly given*

In a case where the Zamindar was a necessary party

SINGH v KESARI LAL

1939 A ..

—O 47, R 1—*Review—Co decree*

Application for review is one of the three remedies

jurisdiction obvious on the face of the record—i.e. case for review

Where there is an error of law, which obviously and without research into the rulings involves a lack of jurisdiction to pass the order of which review is sought is eminently a case in which the error, though technically an error of law is apparent on the face of the record and should be corrected at the earliest possible time without driving the parties to the expense of an appeal or revision petition to which there would be no answer 45 M L J 309 46 Mad 955 and AIR 1935 Cal 153 Foll (*Wordsworth J*) VENKATARAYULU NAIDU v VENKATA KATTAMMA

49 L W 147=1939 M W N 443=

AIR 1939 Mad 293—(1939) 1 M L J 120

—O 47, R 1—*Review—Evidence as to service untrustworthy—Power to restore*

Where the evidence of the person who effected the service is found to be untrustworthy, the case should be restored and retried on the merits (*Marsh S M and Mehta J M*) MAHOMED NURUL ABEEDIN v SHAHZADI 1939 A W R (B R) 68

—O 47, R 1—*Scope—Review—Grounds of Sufficient reason—What amounts to*

A review is permissible under O 47, R 1 C Code if there is record or something (*Chatterji, J J*) PRASAD

C P CODE (1908), Sch II, para 14

69 C L J 573=43 C W N 913=

AIR 1939 Cal 628

—O 47, R 4 (2)(b)—*Strict proof—Meaning of*

The phrase "strict proof" does not refer to the suffi

—O 47, R 7—*Appeal—Order granting review on*

grounds mentioned in O 47, R 7 (*East Ali and James J J*) KESHAB PRASAD MANDAL v JANESH WAR PRASAD MANDAL 6 B R 580=

11 R P 588=181 I C 455

—O 47, R 7—*Scope—If restricts right of appeal under O 43, R 1 (w)—Order granting review for sufficient ground—Appeal See C P CODE O 43, R 1 (w)* 1939 P W N 719

—O 52, R 66 (Rangoon)—*Extension of time for furnishing security—Power of High Court See C P CODE, O 45, R 7* 1939 Rang L R 668 (F B)

—Sch II para 1—*Private reference in pending suit—Award if compromise See C P CODE, O 25 R 3* 1939 Rang L R 280 (F B)

—Sch II para 1—*Scope—If subject to O 32, R 7—Suit for partition—Reference to arbitration—Minor defendant—Omission to obtain leave of Court to enter into agreement of reference—Effect on award and decree based on award See C P CODE O 32, R 7* 20 Pat L T 170

—Sch II para 10—*If mandatory*

—Sch II, paras 14 and 15—*Error in law—Interference*

Where the parties considering that arbitrators' know

The expression "any other sufficient reason" in O 47, R 1 C P Code means any other sufficient reason analogous to those specified immediately previously, that is to say, to excusable failure to bring to the notice of the Court new and important matter. A Court can, therefore, entertain an application for review on the ground that it was passed which was void under S 107 (1) of India Act, not having received Governor General (*Mitter and Stewart v Brojendra Kishore* 184 I O 689=12 B C 271=2 Fed L J 112=

AIR 1939 Cal 557

—Sch II para 14 (c)—*Award not signed by arbitrators on same date—Validity*

The mere fact that one of the arbitrators signed one day later cannot make the award illegal when the deci

—Sch II, para 14 (c)—*Supplemental award—Validity*

C. P. CODE (1908), Sch. II, para 15.

A second or supplemental award given by the arbitrators in pursuance of a reservation made in the first award is not illegal, and it cannot be said to have been passed by the arbitrators at a time when they were *functus officio*. (*Derbyshire, C.J.* and *MUKUNDALAL PAKRASHI v. PROKAS PAKRASHI*, 70 C.L.J. 43—A.I.R. 1

—Sch. II para 15—*Applicability—Statement by a referee—Agreement to abide by statement of specified person.*

The provisions of Sch. II, para. 5, C.P. Code, have no application to a case where parties agree to abide by the statement of a specified person and he makes such a statement in Court. Para. 5 applies solely to the award of arbitration under Sch. II, S. 20 of the Act would apply to such a reference and as

1939 A.L.J. 1—A.I.R. 1939 All 176

—Sch. II, para. 15—Award—Order setting aside—Revision, if lies. See C. P. CODE, S. 115 AND SCH. II, PARA. 15—AWARD, 1939 O.W.N. 751.

—Sch. II, para. 15—Award, setting aside of and arbitration superseded—Revision, if lies. See C. P. CODE, S. 115 AND Sch. II PARA. 15.

1939 O.W.N. 716

—Sch. II, paras 15 and 16—*Construction—Decree has d on award—Appeal on ground that decree is invalid—Maintainability.*

The words of para 16 of 1 are perfectly clear and it would be plain language and the obvious it were held that an appeal lie upon a judgment pronounced a

however, the award is accepted, it means that in the opinion of the Court it is neither void nor invalid, and the opinion of the Court cannot be challenged in appeal. Para 16 merely gives effect to the principle of finality of awards, and the intention of the Legislature evidently is

C P CODE (1908), Sch. II, para. 18.

question. It also makes no difference if thereby the Judge must decide questions which affect his own jurisdiction because his decision on questions of jurisdiction will be subject to appeal.

12 R.S. 75—A.I.R. 1939 Sind 241 (F.B.).

—Sch. II para 15—"Otherwise invalid"—Arbitrator exceeding his powers.

The words "or otherwise invalid" occurring in para. 15 are comprehensive enough to include all kinds of objections. Where the objection that the arbitrator exceeded

41 P.L.R. 380—A.I.R. 1939 Lah 69.

—Sch. II, para 15—*Power of Court.*

Para. 15 of Sch. II of C. P. Code does not provide for the Court setting aside an award in part only. The fact that the consequence of setting aside the award is an order superseding the arbitration is a strong indication that the whole award must be set aside (*Norman, J.C.S.*) MAHOMED YUSUF v. AZIM ULLAH.

1939 A.M.L.J. 15.

—Sch. II, para 15—*Reference to arbitration—Arbitrator, discovered to be indebted to one of parties—Reference, if can be superseded.*

A Court does not act without jurisdiction in passing

5 B.E. 198—A.I.R. 1939 Pat 170

—Sch. II, para 16—*Arbitrator—Position of—If same as that of commissioner—Distinction.*

The contention that the position of an arbitrator is like that of a commissioner appointed by Court is obviously untenable. The essential difference between a commissioner and an arbitrator is that the former is an officer selected and appointed by the Court, in whose

G. P. CODE (1908), Sch. II, para. 20.

The stay of a suit under para. 18 of Sch. II, C. P. Code.

of the suit, there is no occasion for an arbitration, and a pending suit between the parties ought not to be stayed in such a case. If the plaintiff is not aware before the institution of the suit, that there is a difference between him and the defendant or of the nature of the difference, he cannot be said to have gone back upon his agreement to refer to arbitration or is attempting to go back upon it by rushing to Court. Further if the basis of the main defence in the suit is that the contract was induced by either fraud or misrepresentation of the plaintiff and this question does not come within the scope of the arbitration clause the rights of the parties involved in the suit should be tried by the Court. Prayer for stay should be refused. (*Affidavit* *for Rahman, J.*) **LADHA SINGH v. JY SINGHA DEO** I L R (1939) 70 C.L.J. 148-43.

Sch. II, para. 20—Decree passed on unregistered private award—If nullity—Executing Court—If can

Court which passes the decree on the award and the Court which certifies the award.

immovable
with

para. 20 (1908), C. P. Code, and para. 20, MUHAMMAD

COMPANY—Articles of association—Requirement as to number of managing directors—Appointment of a lesser number—Effect—Legality of their acts.

Where the articles of association required that the Board of managing directors should consist of a certain number, but as a matter of fact a lesser number only is

COMPANY.

Liquidation—Chit fund conducted by company—Prize winner—Sureties giving security to enable prize winner to receive payment and undertaking liability for future subscriptions and giving their own non-prized tickets as security for due payment—Default by prize winner—Right to set off amounts due to sureties under their tickets towards subscriptions due by defaulter.

The principle in equity that a creditor is not entitled to recover the amount of his debt for which security has been given when he is not in a position to return the security applies when the debtor and the person giving the security are the same person. Where the holder of a chit in a chit fund conducted by a company bids the chit and gets payment of the prize money on getting other persons to stand surety for him and those sureties give as security their own non-prized tickets. In the chit fund as security for the future subscriptions payable by the bidder, and the company therefore goes into liquidation, it is not open to the bidder who has committed

to claim a set-off amounts due to the company in liquidation. **BANK SUBSIDIARY CO., LTD, SUNDARA VARADAN v. MANI AIYAR.** 50 L.W. 306—A I R. 1939 Mad 915—

A I R 1939 Rang 46.
Winding up—Debt due by company not payable in present—Set-off against debt due to company—Set-off of debt due by it—Set-off by him in liquidation—Fraudulent preference—Company is not presently solvent—Moneys owing to the company in liquidation. If a debtor of a company takes a debt due by the company, before it is a set-off of the one against the other in liquidation proceedings, and it

Winding up—Employee's security for good conduct—Deposit of security money earning interest—Whether trust money—Employee's right to claim priority—Companies Act, S. 282 B (1)

Where an employee of a Bank in liquidation applied to Court to be paid back a sum of money furnished by him as security for his post, in full, and in priority to the claim of any creditor, and on the facts of the case the question arose whether the nature of the relationship between the Bank and the employee in respect of the

COMPANY.

principle of the general law of trusts is that when a sum of money is handed to another person who accepts it for a purpose declared at the time, a binding trust is constituted in respect thereof. The fact that the person to whom the money is handed over happens to be a Bank does not affect the principle. Where a trust is complete, provision for payment of interest by the trustee would not make the trustee a debtor and from the fact of payment of interest alone the relationship of trustee and *cestus que trust* should not be negatived. If the matter was governed by the provisions of the Indian Companies Act, S. 232-B (1), as amended by Act XXII of 1936, there can be no doubt that the answer will be that the relation between the Bank and the employee is one of trustee and *cestus que trust* (*Venkataramana Rao, J.*)

GOPALAKRISHNAN v. THE OFFICIAL LIQUIDATORS, T. N. AND QUILON BANK, LTD.
1938 M.W.N. 1337 = 49 L.W. 181 =
1939 Comp C. 60 = A.I.R. 1939 Mad. 337 =

COMPANIES ACT (1913), S. 28.

preference shares had been declared or paid for several years prior to the winding up.

Held, (i) that the surplus assets must be applied in the first place in repaying to the holders of preference shares the amount paid up thereon and the residue belonged to the holders of the ordinary shares, *(ii)* that the arrears of preferential dividends could not be treated as "debts" and therefore to be paid out of the assets of the company before the "surplus assets" were ascertained. (*Lort Williams, J.*)

NEW RING MILLS CO. LTD.
(IN LIQUIDATION) *In re* I.L.R. (1938) 2 Cal 533 =
179 I.C. 733 = 11 E.C. 609 = 1939 Comp C. 128 =
A.I.R. 1939 Cal 126.

COMPANIES ACT (VII OF 1913), S. 4 (2)—*Applicability—Existence of legal relation between share holders—If necessary*

In order to constitute an association within the meaning of S. 4, the existence of the legal relation between more than twenty persons giving rise to joint rights or

were made by the prize winner, if the company goes into liquidation, the official liquidator of the company cannot be held to be disentitled to recover from the prize-winner any moneys due from him for future subscriptions on the ground that the company, by going into liquidation, has reached a position in which the securities which had been taken from the sureties cannot be returned. So long as the securities and have not been wrongfully dealt with, the sureties would be entitled to the assets realized, whatever the may be. The debtor therefore cannot claim immunity from liability to pay the amounts due by him. (*Gentle, J.*)

MANI IYER v. OFFICIAL LIQUIDATOR, T. N. BANK SUBSIDIARY COMPANY, LTD.

1939 M.W.N. 1193.

—*Winding up—Surplus assets—Preference shareholders—Rights of—Arrears of—*

It was provided by the Memorandum of a company that the preference both as regards dividend and cap ordinary shares. The articles of that preference shareholders should share the profits of the company, if any, as a cumulative preferential dividend on the paid up amount of held by them, and subject to the rights of the preference shareholders, the surplus profits should be divided among the holders of the ordinary shares. There was also a further provision that if the company should be wound up, the surplus assets should be applied in the first place, in repaying to the holders of preference shares the amount paid up thereon, and the residue should belong to the holders of ordinary shares. The company was wound up voluntarily, and no dividend on

1939 M.W.N. 1193 = 1939 Comp C. 254 = A.I.R. 1939 Rang. 273
—Ss. 4 (5) and 283—*Offences under—Case sent up by Police after investigation—Jurisdiction of Magistrate.*

It is true that offences under S. 4 (5) and S. 283 are non-cognizable and cannot be investigated by the police.

1939 M.W.N. 1193 = 1939 Comp C. 254 = A.I.R. 1939 Rang. 273
—S. 21 (2)—*Undertaking to purchase shares by signatories to articles of association—If money becomes due from them*

Though money becomes a debt when it is due under the articles of association and memorandum it does not

Proof—Subscriber for shares in memorandum of association—Liability of—Absence of resolution allotting shares—Effect of.

A person who subscribes for shares in the memorandum of association of a company must, by S. 30 (1) of the Companies Act, be deemed to have agreed to become a member of the company, and on registration his name must be entered as a member in the register of members. But an express allotment of shares

COMPANIES ACT (1913), S 38

necessary in order to give rise to a liability to pay up the

sufficient to show that there was any allotment of shares, where there is no record in the Minutes Book of the Board of Directors.

(1939) 1 M L J 534

—S 38—Award of costs—Discretion of Court

20 Pat L T 703 = A I R 1939 Pat 603

—S 38—Delay in making application—Effect of
A mere delay in making an application for rectification of the register under S 38 of the Companies Act is no ground in itself why the Court should not exercise its jurisdiction under the section. (*Wort J*) MOHADEVI v MOTIKAM ROSHAN LAL COAL CO

5 B R 659 = 181 IC 734 = 11 E P 639 =

20 Pat L T 703 = A I R 1939 Pat 603

—S 56—Retention of share capital—Confirmation—Considerations for Court

It is an elementary principle of law relating to joint stock company that the Court will not interfere with the internal management of a company acting within its own rights and in fact has no jurisdiction to do so. In an application under S 56 the Court is only concerned to confirm the proposed reduction and not the resolution passed by the company. The validity of the resolution cannot therefore be questioned in such application. The only questions to be considered by the Court are: Ought the Court to refuse its sanction

reduction is shared by all and is designed to work justly and equitably and where it does not involve diminution of any liability in respect of the unpaid capital or payment to any shareholder of any paid up capital and there is evidence regarding the loss of capital and non-representation of available assets there is nothing to prevent the Court from confirming such reduction. (*Shaw J*) BURMA

—S
tion—In
of corpor
The C

COMPANIES ACT (1913) S 153

under a statutory obligation to pay 5 per cent of the

requirement. That being so a company should not be allowed to take advantage of its own wrongdoing and neglect of the provisions of the Act by demanding the share money subsequently. (*Gruer, J*) RAMLALSAR v K B M E R MALAK 1939 N L J 305 =

183 IC 748 = 12 N 80 = A I R 1939 Nag 225

—S 103—Failure to pay for shares by directors—If renders shares liable to forfeiture

Where the directors who have signed the articles of association and memorandum undertaking to take a certain number of shares and pay for them, fail to pay for them it does not necessarily follow that they are liable to forfeiture of their shares. (*Allsop J*) VISHWANATH PRASAD JALLAN v HOLYLAND CINETONE, LTD, BENARES 1939 A W R (H C) 746 =

1939 A L J 950 = 1939 Comp C 321 =

A I R 1939 All 739

—S 109—Instrument creating charge—Non registration—Effect

An instrument creating charge on the property of a corporation, if not registered with the Registrar as provided by S 109, is void as against the Official Receiver. (*Lobo, J*) INDUS FILM CORPORATION, LTD, In re 181 IC 681 = 11 E S 234 =

A I R 1939 Sind 100

—S 109 (1) Cl (f)—Floating charge—Meaning of

Where the assets of a corporation are of a fluctuating nature and must change from time to time in the ordinary course of business and while taking loan

—S 140 (3)—Applicability—Refusal by managing agent to produce books before Inspector—Inspector not validly appointed—Offence—Conviction of managing agent—Sustainability—India and Burma (Transitory Provisions) Order, 1937, para 8 (2)

The refusal on the part of the managing agent and

CORPORATION In re 181 IC 681 =

11 E S 234 = A I R 1939 Sind 100

—S 101 (3)—Scope of—Allotment without compliance with requirement of S 101 (3)—Legality—Company, if can demand share money

Sub S (3) to S 101 of the Companies Act lays down a mandatory requirement. The applicant for a share is

183 IC 762 = 12 E M 371 (1) = 1939 M W N 743 = 40 Cr L J 835 = 1939 Comp C 252 = A I R 1939 Mad 589 = (1939) 2 M L J 97

—S 153—Applicability—Foreign Company—Bank incorporated and having registered office outside British India but having central office in British India

COMPANIES ACT (1913), S. 153.

—Application under S. 153—Jurisdiction of British Indian High Court—"Court", meaning of.

The High Court has jurisdiction to entertain an application under S. 153 of the Companies Act, at the instance of a creditor or a member of a foreign company. A Bank incorporated outside British India and having its registered office outside British India is a

expression Court in the case of an unregistered company including a foreign company would mean "the Court in which the said company is liable to be wound

—S 153—Applicability—If confined to company which is in the course of being wound up.

tainability.

Even after an order for winding up a company has

deprive the creditors or members of the right once an order for winding up is made and place them at the mercy of the liquidator who may or may not choose to

creditors to consider scheme—Considerations for Court in ordering.

The Court has to exercise its discretion in making an order under S. 153 of the Companies Act. There is a distinction between making an order under S. 153(1) and an order under S. 153(2) when the scheme before the Court for sanction after the approval of the majority of the Court. It is very essential scheme put forward before the general body of must as far as possible be based upon correct information; and any scheme which is approved must *prima facie* appear to be based on correct information and date. But that does not mean that an application under S. 153 to call a meeting of the creditors to consider a proposed scheme should be rejected merely

COMPANIES ACT (1913), S. 153.

because the same is not based on correct information as to the affairs of the company. The Court can call for a report giving a fair idea of the affairs of the company and on that information the scheme as adumbrated or with the necessary amendment, can be circulated along with the report. A Court ought not to decline to order a meeting of the creditors unless the proposals are

the Companies Act of a-certain facts
INCORE NATIONAL

AND QUILON BANK, LTD., IN RE.

183 I C 353 = 12 R M 272 = 1939 Comp C 14 =
1938 M W N 1313 = A.I.R. 1939 Mad 318
Court under to con

the High Court to deal
scheme when sanctioned
perative on the company
affect the jurisdiction of
"enkataramana Rao, J.)
QUILON BANK, LTD.,
J 353 = 12 R M 272 =
= 1938 M W N 1313 =
A.I.R. 1939 Mad 318.

—S 153—Jurisdiction—Foreign company—
Order for winding up made by foreign Court—Appli-
Indian Court under S. 153—Com-

arrant for holding that because an order

going on—will not ever make the Court give up the
forensic rules which govern the conduct of its own
liquidation. The underlying principle is one of co-
es of justice
RAVANCORE

omp C. 14 =
9 Mad 318.

—S 153—Notice of meeting served on creditor—
Latter assigning his interest to debtor of company before
date of meeting—Assignee, if bound by scheme

ter the issue of a notice of a meeting to
me under S. 153 of the Companies Act on
body of creditors of a company, one of
his interest to a debtor of the company
after the receipt of the notice and before the date of the
meeting, the assignee is bound by the scheme adopted
at the meeting and sanctioned by the Court. He cannot
contend that he belongs to a class of "debtor creditor"

—S 153(1)—"Meeting of creditors or class of
creditors"—Meaning of—Meeting of foreign creditors—
Power to call.

The expression "meeting of creditors or class of cre-
ditors" in S. 153(1) of the Companies A
interpreted as comprising all creditors

COMPANIES ACT (1913), S 179

whether in British India or outside There is nothing to preclude the Courts from directing a meeting of all such creditors The question of principal liquidation or ancillary liquidation does not matter (*Venkata ramana Rao, J*) TRAVANCORE NATIONAL AND QUILON BANK LTD *In re* 183 I C 353 = 12 E M 272 = 1939 Comp C 14 = 1938 M W N 1313 = A I R 1939 Mad 318

—Ss 179 and 183 (5)—Construction and scope—Company—Winding up—Permission to liquidator to sell property for price not less than a fixed sum—Contract of sale by liquidator for sum in excess of stipulated price—Sanction by Court—Sanction acted upon—Subsequent revocation of sanction—Power of Inherent power to revoke sanction

Any sales or contracts of sale effected by liquidator of a company which has gone into in pursuance of the Court's sanction previously are not mere conditional agreements subject to subsequent confirmation by the Court Once the Court has sanctioned the sale of the company's sale of the property and has fixed a reserve price, the matter is closed so far the Court is concerned and the liquidator is free to dispose of the property provided he observes the conditions previously imposed by the Court under S 179 of the Companies Act. The liquidator is free to dispose of the property without the sanction of the Court. It is not necessary to submit them to the Court for approval.

revoke its own sanction nullify the contract of sale. Neither S 179 nor any other provision in the Companies Act gives any authority to the Court to revoke the sanction granted by it. S 183 (5) of the Act is also of no avail because S 183 (5) clearly cannot apply to a case in which the act or decision of the official liquidator has been performed or made in pursuance of the Court's express

—S 183 (5)—Applicability—Act or decision liquidator in pursuance of express sanction of Court—If can be cancelled See COMPANIES ACT, SS 179 AND 183 (5) 50 L W 879

—S 184—Father applying for shares for minor sons—Liability as contributory

A company for which the father had signed a cheque out of his name and the balance in those accounts was drawn out by the minors when they became of age.

Held, that the father when he signed on behalf of his minor sons must be taken to be incapable of contracting and that consequently he and not his sons was liable to be put upon the list of contributories (*C J and Monroe, J*) MUSLIM BANK (IN LIQUIDATION) LAHORE I L R (1939) Lah 1939 Comp C 309 =

COMPANIES ACT (1913), S 229

—S. 222 B—Employees' cash security fund—Company depositing same in Scheduled Bank—Latter—If becomes trustee See BANKER AND CUSTOMER—RELATIONSHIP 1939 M W N 1066.

—S 227—Scope and effect of—S 57 Presidency Towns Insolvency Act—Distinction—Notice—Relinquency

The difference between S 57 Presidency Towns Insolvency Act and S 227 Companies Act, is that while bona fide payments to creditors by an insolvent subject to the very important foregoing sections in the Insolvency Act are permissible and valid and may generally be quite proper payments to creditors of debts previously due to them from the company.

of debts existing at the time of the presentation of a petition for winding up made after the presentation of the petition, cannot be so regarded. Transactions which the law regards as improper and declares void, and which a company conducted with due care and attention ought to avoid cannot be regarded as transactions in the ordinary course of business for the purpose of the Act. It is immaterial whether the company had or did not intend to avoid the effect of the petition for winding up.

CO. *In re* I L R (1939) Kar 460 = 184 I C 428 = 12 E S 103 = A I R 1939 Sind 196

—S 227 (2)—Applicability—Payments by insurance company after commencement of winding up—If void

Where an insurance company makes payments to the insured or his estate after the commencement of the winding up of the company, such payments are not void if the policy was in force at the time of the payment.

ALL INDIA HOME RELIEF INSURANCE CO *In re* I L R (1939) Kar 460 = 184 I C 428 = 12 E S 103 = A I R 1939 Sind 196.

—S 227 (2)—Scope of

Transactions made after the commencement of a winding up which a Court would validate under S 227 (2) are transactions bona fide entered into by a company for the benefit of the company and those interested in the assets of the company for preserving the business of the company as a going concern and not to the detriment of other creditors (*Tyabji, J*) ALL INDIA HOME RELIEF INSURANCE CO *In re* I L R (1939) Kar 460 = 184 I C 428 = 12 E S 103 = A I R 1939 Sind 196.

up—Employees provident fund—If part of assets of company

COMPANIES ACT (1913), S. 230.

govern the conduct of its own liquidation S 230 (1) (c) of the Companies Act, as amended in 1936 is a forensic rule in this sense and ought to be applied in the matter of winding up of a foreign company which is an unregistered company under the Act and that provision would therefore apply to the case of a sum due to any employee from the provident fund account maintained by the company. Where a provident fund is established for the benefit of the employees of a company, called the employees provident fund subscription

the employee is that of a trustee and *cestus que trust* and

fiduciary capacity, and by the combined operation of S 229 of the Companies Act and S 52 of the Presidency Towns Insolvency Act, the said fund does not form part of the assets of the company; the

COMPANIES ACT (1913), S. 282.

only undertake the responsibility of barring these legal remedies to which the people would ordinarily be entitled if it was certain within reasonable limits that they would not suffer any real loss by being deprived of these remedies. Where the Court is not satisfied that the company is in a solvent condition essentially an order under S 277 N cannot be passed (*Allsop, J.*) BENARES BANK LTD, BENARES *In re*

1939 A W R (H C) 707 = 1939 A L J 1009 = 1939 Comp C 321 - A I R 1939 All 726.

S 282-B—Scope and effect of—Company—Employees Provident Fund deposited in Bank—Liability of bank as trustee—Extent of.

fact that a Bank is given notice that money deposited is trust money does not make the Bank a trustee. The legal consequence of such notice is that the Bank will not participate in a breach of S. 282 B of the Companies Act. It is the duty of the Bank to invest all provident fund moneys mentioned in S 20 of the Companies Act at the commencement of the Companies Act which are not so invested shall be invested in such securities by annual instalments not exceeding ten in number and not less in amount than the whole sum of such moneys. On the

in a Bank prior to the 282 B of the Companies Act the deposit is renewed and it cannot be said that the money is held in trust on the ground that the moneys are not invested in approved securities under S 20 of the Companies Act as required by the Act. The amount deposited here can be no more than a trustee in the company may be a trustee in its hands. There can be a breach of it as is required, namely, the annual instalments for the year or years in question, and there can be no breach of trust in respect of the balance (*Venkataramana Rao, J.*) TRICHINOPOLY TENNORE HINDU PERMANENT FUND, LTD. v.

CHIRAGH DIN v. OFFICIAL LIQUIDATOR, PEOPLES

operations under the protection of the Court and that those who had dealings with the company should be prevented from seeking legal remedies to which they would otherwise have been entitled. The Court could

COMPANIES ACT (1913), S. 262.

OFFICIAL LIQUIDATOR T N AND Q BANK, LTD
1939 M W N 1069 = 1939 Comp C 281
— (as amended in 1936), S 282 B (1) — Company
— Security deposited by employee — If trust money —
Right to priority See COMPANY — WINDING UP
1938 M W N 1337

COMPROMISE — Consent decree — Construction —
Decree awarding maintenance to Hindu widow —
Option given to proceed against cha
other immovable properties of joint

gives her an option to recover the am
sale of properties specifically charged by the decree or
out of other immovable properties of the joint family,
it is not open to her to execute the decree for recovery
of her dues by sale of movable properties of the
family. It is not open to her to seek a remedy which is
not given to her by the decree. Though the fact that a
charge is given on specific property would not of itself
curtail the widow's right to recover the decretal amount
out of the assets of the joint family the parties by
reason of the compromise must be taken to have agreed
that the amounts due under the decree should be reco-
vered only out of the immovable properties mentioned
in the decree some of which are charged specifically
(Lohar J.) LAKSHMIBAI v HANTARAM
182 IC 851 = 12 EB 43 = 41 Bom LR 420 =

AIR 1939 Bom 206
— Consent decree — Construction — Money payable on
holiday — Payment into Court on reopening day —
Sufficiency

Where money becomes payable under a
decree on a day when the Court is closed
breach of the compromise to pay the money
on the first day when the Court reopens
Stodart JJ) KASI CHETTI v NAGAPPA CHETTI
1939 M W N 854 = 50 LW 384 =
AIR 1939 Mad 814 = (1939) 2 MLJ 262

— Consent decree — Construction — Time — If of the
essence of contract — Provision for payment within fixed
time — Delay — Power of Court to excuse and extend time

Where a compromise decree provides that a defendant
should deposit a certain amount into Court within a
specified period and that if it is not so paid within that
period the suit would stand decreed without any further
interference by the Court the only inference that can be
drawn from such a provision is that the parties intend
the time to be of the very essence of the contract and
such time cannot be extended by the Court even if
refusal to extend the time involves a forfeiture or some-
thing of that nature. If the Court extends time in such
a case, its act would be without jurisdiction. A Court
can only extend time when it is satisfied that time is not
of the essence of the contract (Harnes CJ)
BISWAMBER SAHU v HARI NAIK 5 CLT 29

— Consent decree — Setting aside — Principles appli-
cable — Compromise by mother as guardian of minor
children — Right of latter to set aside — Limitation

Though a decree can be set aside like other contracts
on the ground of fraud yet in its nature it differs from
a contract between two parties which has not been im-
pressed with the seal of the Court. So impressed it
becomes a Sovereign order and cannot be ignored.
Hence where a compromise decree has been entered into
by a mother on behalf of minors and
have not sued to set it aside within the time
after their minority, they cannot question
and binding force (Davis, J C and

COMPROMISE

PREMGIR v WAWA COMMUNITY KARACHI
1 LR (1939) Kar 560 = 184 IC 643 =
AIR 1939 Sind 251
— Consent decree — Setting aside on ground of
fraud misrepresentation or mistake — Procedure —
Separate suit — Application under S 151, C P Code
— Competency

Where a compromise decree which, on the face of
the record is proper is impeached on the ground of

AIR 1939 Bom 490
— Construction — Compromise on payment of the
money due and full satisfaction recorded

Where as a matter of fact there was only one holding
and not two and when the proceeding taken as regards
the subsequent ejectment decree about the same holding
was compromised on the payment of the money due and
full satisfaction recorded, the full satisfaction can only
be of the full outstanding claim (Marsh SJ and
Mehta J JJ) JWALA PRASAD v MOHAN SINGH
1939 A WR (BR) 161 = 1939 RD 166.

— Construction — Conflicting claims to property
of deceased Hindu — Claim by brother by sur-
vivorship — Claim by daughters as heirs — Compromise —
Division of properties — Allotment of shares to brother
and daughters — Latter to take jointly and enjoy as of
right — Estate taken — Limited estate or absolute estate
V and B were brothers members of a Hindu family

V filed a suit against these
re undivided that he was
by survivorship and that
obstructing him in the
he defendants claimed to
succeed as heirs of their father to his share of the pro-
perty but before any written statement was put in, there
was a compromise. By that compromise which was
drafted as a partition the properties were divided be-
tween the plaintiff on the one hand and the defendants
jointly on the other. The daughters were to have a
share in a family house jointly and to get a share of the
other properties to be enjoyed by them as of right.

Held that the arrangement being only a compromise
of conflicting claims V claiming by survivorship and
the daughters claiming by heirship and not a gift by V
to his nieces the shares taken by each party must be
held to have been taken in the capacity in which it was
claimed that the daughters therefore took only a limited
estate of
absolute e
v ANANI

— Construction — Hindu widow — Compromise
allotting properties to widow in absolute right — Claim
by widow only as heir of husband — Estate taken by
widow — Presumption See HINDU LAW — WIDOW
50 LW 166 = (1939) 2 MLJ 236.

— Procedure — Suit on mortgage — Settlement of
claim — Agreement by defendants to convey mortgaged
properties to plaintiff for amount agreed to be due to
latter — Duty of Court — Dispute as to whether certain
property is mortgaged property — Decision of Court

CONFLICT OF LAWS

for which those defendants are to convey the mortgaged properties to the plaintiff, the Court should pass a decree in terms of the compromise. The question whether a particular property is included in the mortgaged property is not one which has to be decided in those proceedings and the Court has no jurisdiction to incorporate its decision in that matter in the decree in the suit, although the parties invite the Court to hold a local inspection and decide that question and the Court accordingly holds a local enquiry and decides that matter, such decision cannot be incorporated in the decree in the suit based on the compromise. (*Manshar Lall and Chatterjee, J.*) CENTRAL INDIA SPINNING, WEAVING AND MANUFACTURING CO v KHEMRAJ 18 P 261-181 I C 42=11 E P 565=5 B R 524=1933 P W N. 151=A I E. 1933 Pat 514

CONFLICT OF LAWS—Suit on foreign judgment in time according to British Indian Law—Execution of decree barred under foreign law—Effect. See LIMITATION ACT, ART. 117. 41 Bom. L R. 1081.

CONSTITUTIONAL LAW—*Cession*—If includes voluntary cession of people.

The word "cession" is not restricted to the possession was acquired either by conquest or by cession, but it includes cases of voluntary cession by the general consent of people. Hence, the division of ceded territories into two classes, those acquired by an act of cession from sovereign power and those ceded by the

—Interpretation of Constitution Act—British North America Act, ss. 91 and 92—Dominion Law and Provincial Law—Conflict between—Effect of Provincial Law—*Ultra vires* or *intra vires*—Tests—Considerations for Courts. See INTERPRETATION OF STATUTES—CONSTITUTION ACT. 1939 M. W. N. 142 (P. C.)

—Possessions—Ceded territories—Voluntary cession—Power of Crown to legislate.

Even in the case of possessions acquired by voluntary cession, like Malta, the Crown is by virtue of Royal Prerogative *prima facie* entitled to legislate and the principle which excludes the Royal Prerogative has no application. (Lord Maugham) EDGAR 180 I. A.

—Possessions—Responsible Government granted by

legislation precludes the exercise of a prerogative while the legislative institutions continue to exist and a power of revoking the grant must be reserved or it will not exist. But it cannot be said that once such a grant is made, the Crown is immediately and irrevocably deprived of its right to legislate by Letters Patent or Ordinance unless there is an express reservation to that effect. Hence, where the grant of the responsible Government is revoked by virtue of an express power contained in the grant, the Crown has by Royal Prerogative power to legislate for such possession by Letters Patent or Ordinance, even in the absence of express reservation in the grant. (Lord Maugham) EDGAR SAMMUT v. STRICKLAND 180 I C 424=11 E P 560=150=A I E. 1933 P. C. 39 (P. C.).

CONTEMPT OF COURT.

CONTEMPT—*abuse of process of Court*—Obtaining warrant against another in order to blackmail

The misuse of the process of the Court for obtaining a warrant against a person against whom the complainant has no intention of proceeding, merely to use it as a lever for blackmailing him, amounts to contempt of Court. (*Monroe and Blairst, J.*) APD v. HAMID v. IQBAL HUSSAIN 181 I C 81=11 R L 893=40 Cr L J 571=41 P L R 130=A I E. 1933 Lah 143.

—Attack on parties to pending litigation—Assumption of truth of facts awaiting decision—Prediction that certain party will win and justice will thereby be defeated

A pamphlet which assumes the truth of certain facts which are connected directly or indirectly with the matters under consideration and awaiting decision in a pending litigation, amounts to contempt of Court. So also a document containing reflections of the gravest possible nature upon the conduct and the character of

—Interference with administration of Criminal Justice—Writing of letters about pending cases

Where a member of the Legislative Assembly writes letters to a District Magistrate about certain pending criminal cases, he is attempting to interfere with the administration of criminal justice which nobody is entitled to. (*Bennet and Verma, J.*) EMPEROR v. DHAR PRASAD 181 I C. 658=11 E A 579=1939 A Cr C 35=1939 A W R (H C) 128=1939 A I J. 99=A I R 1939 All. 247.

—Jurisdiction of Chief Court of Oudh—Contempt of subordinate Courts. See CONTEMPT OF COURTS ACT (1926) s. 2 (2) AND (3).

1939 O W. N. 296 (F B)—A I R 1939 Oudh 131.

—Pending proceedings—What constitutes.

A pamphlet published during the pendency of proceedings comes within the definition of "contempt of Court" if (1) it assumes the truth of certain facts which are connected directly or indirectly with the matters under consideration and awaiting decision in the proceedings.

ing and adds the comment in effect that if he is successful law and justice will be defeated. (*Costello, J.*) BIBHABATI DEVI v. RAMENDRA A I E 1939 Cal 672.

OF COURT—Communication to a Judge—When amounts to.

Every private communication to a Judge for the purpose of influencing his decision upon a pending matter, is contempt of Court, as tending to interfere with the course of justice. On the facts of the case it was held that a letter addressed to a Magistrate at a time when no proceedings were pending before him did not amount to contempt, as it was not the intention of the writer to influence the Magistrate by means of that letter. (*Zia-ul-Hasan and Yorke, J.*) RAM SHANKAR v. SHUKLA. 181 I C 466=11 R O 307=1939 O A 447=1939 O W N 672=1939 A W R. (C C) 82=1939 A Cr C 27=1939 O L R. 315=40 Cr L J. 666=2=A I E. 1939 Oudh.

CONTEMPT OF COURT

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an

respect of the proceedings pending before him grossly
offends against the law of contempt of Court. It is in
the clearest terms an attempt to prejudice the mind of
the magistrate in regard to the trial of the case before
him (*Zia ul Hasan and Yorke, JJ*) MAHABIR
PRASAD v C B GUPTA 181 IC 714-

1939 O W N 525=1939 O A 487=
1939 A Cr C 89=1939 O L R 363=
11 E O 323 (2)=1939 A W R (C C) 84=
A I R 1939 Oudh 180

witnesses and as such there was not even a technical
offence of contempt committed (*Zia ul Hasan and
Yorke JJ*) MOHAMMAD YUSUF v IMTIAZ AHMAD
KHAN 181 IC 575-11 E O 308=

40 Cr L J 569 1939 A Cr C 84=
1939 O L R 336=1939 O W N 467=
1939 O A 443=1939 A W R (C C) 79=
A I R 1939 Oudh 225

—Power of Court to commit—Exercise of—Rules

The power to commit for contempt is not to be lightly
used and should be reserved for cases where the con-
tempt is deliberate and of such a nature that commit-
tal is called for (*Leach C J Madhavan Nair and
Gs*)

—What constitutes—Matters pending before Court
or about to come before Court—Comment on—Discussion
of rights and wrongs—Propriety of—Good intention
and bona fides of person commenting—Relevancy

To comment on a case which is *sub judice* or to
suggest that the Court should take a certain course in
respect of a matter before it undoubtedly constitutes
contempt and honesty of motive cannot remove it from
this category. If this were to be allowed persons in a
position to assist the Court by their evidence might be
prevented from coming forward and persons appearing
as witnesses might be influenced in their testimony.
The criterion is not whether the Court will be influenced
but whether the action complained of is calculated to
prejudice the course of justice. Good intention is not
the deciding factor in a matter of contempt though the
intention and *bona fide* nature of the action constitute
contempt have an important bearing on the question
whether the Court should take a
case which is about to come
knowledge of that fact is just
comment on a case actually launc
a newspaper of the rights and wrongs of a case when
pending before a Court is improper and constitutes
contempt of Court. This does not mean that reference
cannot be made to pending cases or that items of news

CONTEMPT OF COURTS ACT (1926), S 2

I L R (1939) Mad 466=181 IC 451=
11 E M 813=1939 M W N 113=40 Cr L J 533=
49 L W 29=A I R 1939 Mad 257=
(1939) 2 M L J 813 (F B).

—What constitutes—Threatening letters to opposite
side counsel demanding withdrawal of allegations in
pleadings—If amounts to

It is indeed difficult and well nigh impossible to frame
a comprehensive and complete definition of contempt of
Court. Anything that tends to cartail or impair the

CONTEMPT OF COURTS ACT (XII OF 1926)—

Scope of

(*Per Yorke, J*) Far from the enactment implying a
recognition that no such power had in fact previously
existed the Contempt of Courts Act is an Act which
creates no fresh powers at all but merely recognises the
fact that such powers already do exist but seeks to define
and limit them (*Thomas C J Zia ul Hasan and
Yorke, J*) MAHOMED YUSUF v IMTIAZ AHMAD
KHAN 14 Luck 492-11 E O 248=

40 Cr L J 421=180 IC 745=1939 O A 326=
1939 A W R (C C) 59=1939 O L R 194=
1939 O W N 296=1939 A Cr C 57=
A I R 1939 Oudh 131 (F B)

—Chief Court of Oudh—Pos-
sisdiction as regards contempt

Oudh is by virtue of the Oudh
Courts Act and Ss 219 and 220 of the Government
of India Act the High Court of Oudh and
the one and only Court of Record and by virtue
of its position akin to that of the Court of
Kings Bench. It has its power of superintendence
over all inferior civil and criminal Courts and it
has power to protect its subordinate Courts from
improper interference in the administration of Justice.
It would be absurd to think that such a Court which is the
custodian and protector of public Justice throughout the
province of Oudh has no power to deal with the
contempt of Courts subordinate to it. Its powers in
that respect are defined and limited by the Contempt of
Courts Act of 1926. The Act is silent as to the powers
of the Chief Court to deal with contempt of Court sub-
ordinate to it but such power cannot be negated by
silence and is to be inferred from the wording of sub-
Cl (2) of S 2 in which the words subject to the provi-
be otherwise meaningless and

CONTRACT

Basis of suit.
Breach—Damages.
Concluded agreement.
Construction
Formation
Hire purchase
Insurance
Mortgage (non-payment within time).
Pakka adatiya
Performance.
Priority.
Sale.
Shipping
Third party-right of suit.
Validity.

—Basis of suit—Deed not properly stamped—
Falling back upon prior oral negotiations—Permissi-
bility.

Where the deed forming the contract between the

delivery of goods—Proper measure of damages.

Where the buyer fails to take delivery of goods con-

CONTRACT.

ed by the plaintiff and that neither of the two eventua

—Concluded agreement—Burden of proof—Option
given for renewal of contract—Terms of new contract.

In an action brought on an alleged contract the
burden of proof is of course, upon the plaintiff to show
that a firm contract had been entered into between the
parties and that something more than mere negotiations
had taken place. The negotiations and correspondence
must be looked at as a whole to see whether the parties
to them have concluded a binding contract or not.
Where only certain terms of the contract were settled
and the other terms of the agreement were left open

when a party
to the contract
on terms which
does not in any
contract, or any
new one. In
other words, the party does not bind himself in any way
to renew the contract upon the old terms. (*Robert,*
C. I. and Dunkley v. AKOOJEE JADWET & CO. v.

for the loss which he has suffered by reason of the
defendant's breach. The correct measure of damages is
the loss sustained by the plaintiff, and that loss is
properly estimated as the amount stated as payable under
the assignment deed plus a reasonable rate of interest.
The Court therefore is justified in awarding interest on
that amount although there is no provision for interest
in the deed of assignment. (*Harrier, C. J. and Fazl*
Ali, J. SHEONARAIN PRASAD &
PRASAD SINGH

—Concluded agreement—Accept
subject to new conditions—Contract, i

Arbitration Act has no application. This construction
will include arbitration under Sch. II, C. P. Code.
(*Mitter and Latifur Rahman, JJ. LADHA SINGH*
v. JYOTI PRASAD. I L R (1939) 2 Cal 181=

70 C.L.J 148=43 C.W.N. 879.

—Construction—Cancellation of contract in case of
bankruptcy or any other reason—Interpretation.

for strike among workmen or any unforeseen event, or
ever either through
your agents are
der' His terms
accepted by the
t supplied. The

order and liable to
al, JJ) HOSIERY
WAHID UD-DIN.
-41 P.L.R.
B. 1939 v

CONTRACT

—Construction—Contract between mining company and power company for supply of electric power—Agreement to extend for mining life of properties operated, owned or controlled by consumer—Latter ceasing to occupy, own or control the property—Mining life of property continued—Effect on agreement

A mining company entered into a contract with the power company for the supply of electrical power. The contract also got other things provided that during the continuance of the contract no system of electricity other than that furnished by the power company should be used in said premises. The agreement was to extend for the mining life of the properties operated, owned or controlled by the consumer (the mining company). After the supply continued for some years the mining company informed the power company that they no longer had the ownership of the property and hence were no longer bound by the contract. If the power was supplied the new company working the mines then would be liable. Ultimately the mining company went into voluntary liquidation. In response to the usual notice of claims the power company sent in a claim for damages for breach of contract. The contention of the

property, the contract necessarily came to an end. Hence the mining company was not liable to pay any damages. (Lord Atwell of Ailwren) NORTHERN ONTARIO POWER CO LTD v LA ROCHE MINES LTD

181 IC 444 = 11 R P C 242 =
A I R 1939 (P C 59 (P C))

—Construction—Contract of insurance Company and employee—salary—Employee expected to come—Contract if one of guarantee

A contract between an Insurance employee provided as follows—(1) That the employee should get Rs 125 per mensem as salary. Subsequent increment should be proportionate to the increase of business on the basis of calculation being one and half pacs. (2) That the employee was expected to complete a business of Rupees one and half lacs during the first year which was to increase year by year with the expansion of organization.

Held, that the Contract could not be construed as one of guarantee, that the expectation of the employer that the employee would secure business was not an essential part of the contract but was merely a hope and that therefore the securing of business was not a condition precedent to the payment of the salary. (Ram Lal J) PREM PARKASH SHARMA v FEDERAL INDIA ASSURANCE CO LTD

41 P L R 569 =
A I R 1939 Lah 509

—Construction—Forum of suit—Contract to be carried out in Calcutta—Casual variations—Effect of

than the plaintiff made it clear that the contract should be instituted at Calcutta

CONTRACT

(James J) KANI RAM HAZARI MAL v SITARAM AGARWALA

5 B R 189 = 11 R P 326 =

179 IC 128 = A I R 1939 Pat 140

—Formation—Offer and acceptance—Despatch of offer by telegram—If part of the cause of action See 1 LETTERS PATENT (MADRAS) CI 12—JURIS DICTION

50 L W 597.

—Hire purchase—Owner's right to rent—If lost by exercising right to re-take possession

The general rule is that in a hire purchase agreement the right of the owner to recover rent is not lost by the exercise of the right to re-take possession even in the absence of an express stipulation to that effect. (Teh Chand J) MODERN FINANCE LTD, DELHI v OM PARKASH

184 IC 100 = 12 R L 165 =
41 P L R 365 = A I R 1939 Lah 324

—Insurance contract—Fraud—Effect of—Willful suppression of material facts by assured—Right of insurer to avoid contract

In a proposal for insurance the utmost degree of good faith is required. Where the insured in reply to the questions of the insurance company during the course of inquiry into his proposal withholds the facts that his her company on himself insured and deliberately material information fraud and the

—Mortgage—Non payment of mortgage money within stipulated period—Effect—If can be substituted by new contract

The effect of non payment of the mortgage money within the stipulated period is merely to furnish a cause of action to the mortgagee to sue on the mortgage, the

—Pakka adatia—Duty to upcountry constituent—Teh mandis transaction—Option as to buying or selling

—Pakka adatia—If bound to exercise without instructions from constituent—Obligation—If can be implied—Course of dealing

It cannot be held that there must be implied in every contract of *tehi mandis* entered into by a *pakka adatia* on behalf of an upcountry constituent an obligation on the agent without any further instructions to exercise the option as to the selling or buying on the *sahi* day or to enter into the requisite cross contract and carry the transaction through on behalf of the upcountry client. It is of course open to the constituent to provide for it in the original contract. But it is dangerous to imply terms in such contracts which are very common in the Bombay market. *Prima facie* an agent may accept or refuse business which is offered to him. The fact that he has accepted business on several previous occasions cannot involve him in law in an obligation to accept fresh business in future. (Baumont C J and Runghe

183 IC 22 =

41 Bom LR 308 =
A I R 1939 Bom 225

to pay foreign unit of regulated

here will be liable to pay a foreign unit of account, the form in which such payment is to be made

CONTRACT.

must be regulated by the Municipal law of the country whose unit of account is in question. What would or would not be a legal tender or currency must depend

AIR 1939 PC 71 (PC)

Privity—Absence of—Effect.

A person obtained a license for a liquor shop *bonami*

CONTRACT.

vendors for realisation of amount—Liability under bill of lading—Estoppel by reason of statements in bill of lading.

One *M* purchased in the local market some bags of food stuffs and after lodging the shipping bills with the customs, obtained the necessary permission to export, and the goods were put in a lighter for transshipment in a ship which was expected to arrive the next day. The ship did not arrive as expected and in anticipation of her arrival, *M* obtained from the Manager of the shipping company bills of lading duly filled in, which he presented the same day and on those bills of lading he obtained from the Bank advances on policies, he obtained from the Bank and disappeared. One of the bills of lading was made payable to *M* and was presented against *M*.

non-subsistence

Property subject to a mortgage is sold and a

no claims against the goods in possession of the unpaid vendor. The Bank was

AIR 1939 All. 289

Shipping—Bill of lading—Liability of shipping company—Shipper putting goods in lighter for transshipment in ship due to arrive next day—Ship not arriving as expected—Shipper obtaining from manager of shipping company bills of lading duly filled—Bills of lading pledged with Bank for loan raised by Shipper—Bank suing shipping company, its Manager, and unpaid

which he was not party cannot sue directly upon that contract without invoking the doctrine of trust or agency. (*Somire J*) **MOTILAL AKBARBHAI,**

183 I.C. 785—12 E.B. 131—41 Bom L.R. 533—

AIR 1939 Bom 309.

Third party—Right of suit—Arbitration—Award—Enforcement by stranger.

CONTRACT

A stranger, who renders services to an arbitrator as

parties contract to confer benefit upon a stranger so as to enable him to sue upon the contract but where it is clear on facts that some measure of privity is established between the third person and the contract he may sue on it (*Davis v C and Tyabji v J*) TARACHAND KHIMANDAS v SYFD ABDUL RAZAK SHAH

I L R (1939) Kar 422=182 I C 226=
12 R S 4=A I R 1939 Sind 125

—Third party—Right of suit—Sale of mortgaged property—Vendee undertaking to pay off mortgage—Default—Sale in execution of decree on mortgage—Transferee of part of property free of mortgage—Right

11 M 1

751

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pay—Decree on earlier mortgage—Purchaser of redemption paying off that decree—If a benefit of contract between mortgagor and a mortgagee

Where a later mortgagee failed in his undertaking to his mortgagor to pay off an earlier mortgage and a decree had been obtained by the earlier mortgagee a purchaser of the equity of redemption of the mortgagor who pays off that mortgage decree, cannot seek to claim the benefit of that contract between the mortgagor and his mortgagee nor enforce it. There is no provision either in the T P Act or any other law providing that the benefit of such a contract attached to immov-

CONTRACT ACT (IX OF 1872), S 2 (d)—Consideration—If may move from third party

The consideration for a promise need not necessarily move from the promisee but may move from a third

Discharge of a person from liability is a sufficient consideration for a contract (*Nawal Kishore, C J*)
ABDUL GAFFOR v PARSRAM

1939 M L R 12 (O)

—S 2 (g) and (j)—Relative scope of—Contract when becomes void

Not every unenforceable contract is declared void but only those unenforceable by law and those words mean not unenforceable by reason of some procedural regulation but unenforceable by the substantive law. For example a contract which was from its inception illegal such as a contract with an alien enemy, would be

CONTRACT ACT (1872), S 16

avoided by S 2 (g) of the Contract Act and one which

Code would not cause a contract to become void (*Lord Porter*) MAHANTH SINGH v U B A YI

1939 O W N 401=43 O W N 641=181 I C 1=

5 B R 676=1939 O L R 270=

1939 Rang L R 358=11 R P C 213=50 L W 27=

41 Bom L R 742=20 P L T 532=

1939 M W N 727=1939 O A 559=

1939 A L J 697=1939 A W R P C 169=

A I R 1939 P C 110 (1939) 2 M L J 253 (P C)

—S 6 (1) and (2)—Relative applicability—Allotment of shares long after application—Eff

If a proposer revokes his offer before its acceptance, then S 6 (1) of the Contract Act applies even if he does not revoke S 6 (2) applies unless of course the proposer's conduct amounts to a waiver of the revocation

of a reasonable

made more than

it was not even

to take shares

(*Gruer v J*)

RAMLAISO v K B MER MALAK

183 I C 748=12 E N 80=1939 N L J 305=

A I R 1939 Nag 225

—S 11—Vakalatnama—Competency of minor to execute in favour of advocate to conduct criminal case See MYSORE CR P CODE, S 495 (3)

44 Mys H O R 119

—S 12—Burden of proof—Old man proved to be under mental disability, senile dementia at particular

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CONTRACT ACT (1872), S. 16.

actually of age at the time the . . .
These principles are equally appl . . .
S. 16 A Mahomedan lady d . . .
daughters and husband as benefi . . .
The husband was appointed sole ex-cutor and was
natural guardian of person of daughters and testamen-
tary guardian of their property. The daughter . . .
brought up in pardanashin conditions. Their
immediately after the daughters had attained the
legal majority, obtained from them in his favc
and unconditional release in respect of their shares in
mother's property.

Held, that the actual relationship of parent and child
and a fortiori the added relationship of executor and
beneficiary and of guardian and ward were amply
sufficient to raise a *prima facie* case for attributing to
the father that "dominating position" which is the first
of the statutory requirements of S. 16 The transac-
tion was on the face of it unconscionable. (*Roberts C.*
J. and Brand, J.) **MARIAM BIBI v. CASSIM EBRA**
HIM. A I R 1939 Rang. 278.

—S 16—*Undue influence—Person accepting com-*
promise as he had no other option—Inference
influence—If justified

The fact that a person accepted the terms
promise, as he had no other option, cannot
to determine whether compromise is liable to be at-
tacked as vitiated by undue influence. (*Fazl Ali and*
Chatterji, J.J.) **SHIBA PRASAD SINGH v. TINCOURI**
BANERJI. 183 I C 855=5 B E. 999=

12 E P. 195=A I R. 1939 Pat 477.

tion of undue influence.

Where a Mahomedan younger brother who has just
come of age enters into a transaction of a mortgage at
the instance and for the benefit of his elder brothers who
till recently were his guardians and under whose influence
he was admittedly living, and the effect of the transaction
is to make him and his property liable as security for a
heavy debt for which he was not in law liable at all, it is
not necessary for him, to sustain his plea of undue
influence, to prove by direct evidence that his elder
brothers exercised undue influence. The exercise of
undue influence may in the circumstances be fairly pre-
sumed, in view of the relationship of the parties and the
nature of the transaction. When there is evidence of

1939 M.W.N. 976.

—Ss 19 and 20—*Decree for possession with costs*
—Offer by judgment debtor not to file appeal if plaintiff
gave up costs—Appeal time barred at time of offer—
Validity of agreement.

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CONTRACT ACT (1872), S. 23.

debtor had made a dishonest misrepresentation the
agreement would be voidable at the instance of the

—S 19, Excep—*Applicability—Fraudulent*
misrepresentation

The Exception to S. 19 of the Contract Act applies to
cases of misrepresentation as distinguished from fraud
and not to misrepresentation which is "fraudulent with-
in the meaning of S 17" The phrase "fraudulent
within the meaning of S 17" in the exception should be
deemed to apply to the preceding word "silence" ex-
clusively, and not to the word "misrepresentation."
Where in a suit for rescission of a contract for the pur-
chase of a certain property, the evidence was that the
defendant caused certain letters to be written in which
he represented for the purpose . . . for the purpose
in the eyes of a . . .
induced by the . . .
the defendant . . .

to enter into an agreement with the latter to purchase
the property at a high price

Held, that it was a case of deliberate active fraud
which came within S. 19 and not within the exception,
and that, therefore, it was not incumbent upon the
plaintiff to establish that he had no means of know-

104 I C 541=14 I C 220=43 O W N 31=
A I R. 1939 Cal. 473.

—Ss. 21 and 72—*Payment of bill by consumer to*
Electricity Supply Co. under mistake that it had made
valid rules—Right to refund.

Where a consumer of electricity pays the bill to the
Electricity Supply Co. under mistake that the company
had made rules after all necessary legal preliminaries
had been gone through, this is not a mistake as to
any law in force in British India. This is a mistake of
fact and is covered by S 72 Besides this, if the pay-
ment is made under protest after being warned that
supply would be disconnected if the payment is not made,
this is sufficient to constitute coercion in the general
sense of the word and the consumer . . . be entitled to

AKA RAM v.
GENERAL
Pesh 66=
A I R. 1939 Pesh 8.

—S 23—*Applicability—Composition between debtor*
and creditor—Secret agreement to prefer some creditors
—Effect of.

In cases of a composition, where all creditors have
agreed to accept a dividend on their claims, given
to the . . .
ce is . . .
ed on . . .
that . . .
creditors that they . . .
is a fraud upon the . . .
secret agreement, . . .
in the belief that . . .
to be preferred, . . .
VAL RAMOONAL v.
(1939) Kar 147=
A I R. 1939 Sind 33.

CONTRACT ACT (1872), S 23

—S 23—*Stifling prosecution—Agreement to refer dispute to arbitration and drop criminal proceedings—Validity—Collateral agreement by surety—If enforceable*

Criminal cases under Ss 147 and 323, I P Code were pending in respect of a dispute between defendants Nos 1 and 2 about the construction of a wall. The

defendant No 1 for payment of any amount which may be awarded against him. The arbitrator awarded a sum of Rs 200 as against defendant No 1 and in pursuance of this award the plaintiff paid the sum on behalf of defendant No 1 to defendant No 2. Thereafter he instituted the present suit for the said sum from defendant No 1.

Held, (i) that the agreement to refer was void as the dropping of the criminal part of the consideration for it (ii) but that the contract between the plaintiff and defendant No 1 as regards the payment of any amount awarded against defendant No 1 was collateral to the agreement, and that there was no reason why the plaintiff and defendant should reimburse the former for the sum he paid on his behalf, should not

J) MIR MOHAMMAD KHAN v
41 P L R 144.

—S 23—*Stifling prosecution—Agreement to convey land—If void*

A person prosecuted some persons for a non com-

plaint should be sold by the accused to the complainant for Rs 25. Thereafter the accused were acquitted in the criminal case and four months later one of the accused received Rs 25 from the complainant as

was over. Hence the agreement was not void. (Mohammad Noor, J) RAMASRAY RAI v LAL BAHADUR RAI 183 I C 507=12 E P 161=5 B R 959=20 P L T 780=A I R 1939 Pat 291

—S 23—*Stifling prosecution—Offence compound*

CONTRACT ACT (1872), S 30

the pendency of the case to refer the dispute to arbitration and incidentally to withdraw the prosecution is perfectly lawful (Addison and Ram Lall, JJ) RAJA RAM v CHARANJI LAL 182 I C 490=12 E L 38=A I R 1939 Lah 98

—S 25(3)—*Acknowledgment of partnership debt*

creditors but the acknowledgment does not contain a distinct promise to pay the amount, the partner cannot be said to be doing anything beyond merely acknowledging the correctness of the amounts which stand in the

12 E P 101 (2)=5 B R 874=20 P L T 825=A I R 1939 Pat 323.

—S 25(3)—*Agent generally or specially authorised—De facto guardian—Power to renew*

debt (Lokur, J) NAROTTAMDAS v CHITTA 41 Bom L R 896=A I R 1939 Bom 464

—S 25(3)—*Balance struck in account book*

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'agreement'
contains a
MAHOMED
Lah 486
there along

with a view to settling his account book in respect of debts prior to his joining partnership—Liability

Two persons who had entered into a partnership had borrowed money for their business. Subsequently, another person joined these persons to form a new

partner can be made liable for debts of old partnership explained (Fazl Ali, J, on difference between Manohar Lall and Chatterji, JJ) MADHO PRASAD v. GOURI DUTT 183 I C 179 (2)=12 E P 101 (2)=5 B R 874=20 P L T 825=A I R 1939 Pat 323

—S 25(3)—*Promise to pay—If not unequivocal*

rep alive a time barred debt the promise expressed in unequivocal terms (Din J) JOTI PARSHAD v RAHAM ALI A I R 1939 Lah 466.

Wagering contract—Relationship of agent

CONTRACT ACT (1872), S. 37.

If a wagering contract is entered into directly between two persons and no relationship of principal and agent existed between them, the fact that it is by way of wager would dis-entitle one to recover any losses in respect of the contract. But if the contracts were entered into by one not directly with another, but through that person's agency, then that person would be

other than those contained in contract between parties—Power to make.

Worl, J.—It is clear that there is no obligation laid down by the legislature in S. 37 of the Contract Act to make a decree in terms of the contract and of no other terms. The section itself provides for a possible dispensation to the parties to the contract, as appears from the latter part of the section. For example,

CONTRACT ACT (1872), S. 45

Obiter.—The heirs of a single promisee are for the purpose of an unaccepted tender in the same position as joint promisees, that is, a tender to one of them is a valid tender (*Mitter, J.*) **BEJOY GOPAL DUTT v. NABIN BALA DASSI.** 43 C.W.N. 423.

—Ss. 39, 64 and 65—Contract wrongfully repudiated by a party—If becomes voidable at other party's

both the parties and continues to be so enforceable until the repudiation is acted upon by him.

Per Nasim Ali, J.—Mere repudiation of a contract by a party is nothing but an offer to rescind. The party not in default must act upon the repudiation so as to accept this offer. Otherwise the contract remains in force and continues to be enforceable by both the parties. Termination of the contract by the promisee

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Where in respect of a transaction representing a sale with a condition of repurchase, the vendor deposits money in Court within the stipulated time under S. 83 of the T. P. Act proceeding on the footing that the transaction represents a mortgage by way of conditional sale, and the Court serves notices on all the vendees, there is a valid tender of the money by the vendor who is entitled to a reconveyance (*Mitter, J.*) **BEJOY GOPAL DUTT v. NABIN BALA DASSI.** 43 C.W.N. 423

—S. 38 (5)—Heirs of single promisee—If joint promisees.

MANEHODH BHAGAT v. JASWANT KUMAR SINGH.

17 Pat 662-20 P.L.T. 282-1939 P.W.N. 141.

—S. 43—Scope and effect of—Joint promisors—Liability undertaken under same document by several persons—Separate suits by promisee against several promisees—Maintainability. See **MYSORE C. P. CODE, O. 1, R. 6** 17 Mys L.J. 257.

—S. 45—Joint mortgagees—Suit by one only—Death of the other during pendency of suit—Effect.

Where there are two mortgagees and a suit is filed on the mortgage by only one of them, the absence of the other as a party becomes immaterial when during the

CONTRACT ACT (1872), S. 56.

course of the suit he dies. The person suing though he had no right to sue alone -- the person who had acquired that right during death of the other (*Griff*)

PRASAD v. BADRI PROSA

1939 N L J

—S 56—Applicability — Compromise
—Direction for payment of money to next

CONTRACT ACT (1872), S. 65.

v. BHAGAWATI

AIR 1939 Rang 413.

—S 62—Suit on novated contract—Burden of

a suit based on a novated contract the plaintiff under the ori of that habi and Chatterji, IRI BANERJI.

upon the original contract of debt and sue to recover the amount due (*Gruer, J*) SURESH CHANDRA DAS GUPTA

BRAGWANDEEN

1939 N L J 2

—S 62—Novation—

ledgment of partnership debt by newly admitted partner along with old partners—Effect of.

Novation of contract is not consistent with the original debtor remaining liable in any form Hence

—S 64—"Rescind"—Meaning of

Rescind

"rescind" has been used with reference to two classes of contracts, namely, (1) contracts which are executory and (2) contracts which are partly executed and partly executory. In case of contracts coming under the first head

(*Lall and Chatterji, J J*) MADHO PRASAD v. GOURI DUTT.

1939 C 179 (9) = 5 R P 274

—S 65—Applicability—Contract by Municipality

enter in
entirely
on hand

quently neither the debtor carries out his part of the

the principle of S 65 who id

original hand note. In such circumstances the provi-

—S 65—Applicability—Mortgage bond by wife to
rescution
adjusted
—Balance

—S 62—Scope.

Section 62 presupposes that the original contract is still capable of performance (*Mackney, J*) DWARIKA

that they entered into a conspiracy and defrauded the Bank by withdrawing a large sum of money on insufficient securities Under an arrangement between the

CONTRACT ACT (1872), S. 65.

parties that the criminal case would be withdrawn if the dues of the Bank from A were adjusted to the satisfaction of the Bank, A's wife mortgaged her properties to the Bank. Although the mortgage bond was ostensibly drawn up as for consideration paid in cash, the major part of the consideration was really adjusted towards her husband's debt with the Bank, and she actually received only a small balance.

Held, that at the time when the mortgage bond was given and accepted, both the parties knew that its object or purpose was illegal and that, therefore, the small balance paid to A's wife under the bond could not, therefore, be recovered back by the Bank. (*Nasim Ali and Henderson, JJ.*) DURGISH NANDINI DASSI v. BHOWANIPUR BANKING CORPORATION.

43 C.W.N. 260

—S. 65—Contract of sale found to be void—Vendee's right to interest on purchase-money.

The second part of S. 65, Contract Act, namely "or to make compensation for it" only comes into play when the advantage cannot be restored. Moreover interest on the money paid under void contract would only be payable after the advantage has been refused to be restored. Where therefore a contract of sale by District Board is found to be void for want of sanction of the Commissioner and the money paid under it is repaid to the vendee after the Commissioner has refused to sanction it

—S. 65, III (d)—Departure from English law.

Per *Nasim Ali, J.*—Illustration (d) to S. 65 of the Contract Act provides for restitution to the party who commits breach, where the breach is not wilful and the contract becomes void by reason of some event which

CONTRACT ACT (1872), S. 69.

(*Leach, C. J. and Potanjalai Sastris, J.*) RAJARATHNA CHETTIAR v. SHAIK MAHBOOB SAHIB

(1939) M W N 798 = 50 L W 323.

—S. 69—Applicability—Contractual obligations.

Per *Henderson J.*—S. 69 of the Contract Act applies to contractual obligations. (*Henderson and Lalit for Rahman, JJ.*) BIRAJ KRISHNA MUKHERJIA v. PURNA CHANDRA TRIVEDI

I.L.R. (1939) 2 Cal 226 = 69 C.L.J. 550 = 43 C.W.N. 831 = A.I.R. 1939 Cal 645.

—S. 69—Applicability—Lambard and co-sharers

—Suit by former for recovery of arrears of revenue paid by him on behalf of latter—Maintainability in Civil Court—*See* C. P. LAND REVENUE ACT, S. 152.

A.I.R. 1939 Pat. 497.

—Ss. 69 and 70—Applicability—Landlord and tenant—Irregular cultivation by tenant with Government water—Levy of water cess from landlord—Suit by latter against tenant—If one for "rent" or one for compensation—Jurisdiction of Revenue Court, *See* MADRAS ESTATES LAND ACT, S. 3(11).

(1939) 2 M.L.J. 440.

—Ss. 69 and 70—Applicability—Putnidar having $\frac{2}{3}$ share paying entire rent to present soli—Darputnidar and Sepatnidar under other putnidar contracting with him to pay his patti rent to Zamindar—Liability to contract.

J.J. BIRAJ KRISHNA MUKHERJIA v. PURNA CHANDRA TRIVEDI.

I.L.R. (1939) 2 Cal 226 =

69 C.L.J. 550 = 43 C.W.N. 831 =

A.I.R. 1939 Cal 645.

—S. 69—Applicability—Payment by purchaser of

putnidar.

A darputnidar who undertook in his lease to pay the putni rent to the Zamindar, executed a mortgage of his tenure. The mortgage bond provided that the mortgagee was at liberty to pay any rent payable by the mortgagor and recover that amount from the mortgaged property or from the mortgagor personally. The putni rent having fallen into arrears, the Zamindar advertised the putni for sale under the Putni Regulation. The mortgagee avoided the putni sale by depositing the sum due and sued the putnidar and the darputnidar for the recovery of that sum.

Held, that the mortgagee was entitled to a decree not only against the darputnidar but also against the putnidar who was "bound by law to pay" the rent within the meaning of S. 69 of the Contract Act. (*Ghose and*

lity under—Creditor advancing money for necessities of minor—Right of reimbursement—Right to interest—Limitation for suit

It is a well settled principle of the general law that a guardian cannot impose a personal liability on his ward and therefore a minor cannot be bound by a personal covenant in a contract by his guardian. The minor's personal law may however, affect the position. S. 68 of the Contract Act allows a person who has supplied a minor with necessities such as maintenance and litigation expenses to reimburse himself from the minor's property, and he can also claim interest on equitable grounds, and a fair rate would be the Court rate of 6% per annum. Arts. 69 and 120 of the Limitation Act would apply to a suit by the creditor to recover from the minor monies advanced by him for necessities.

CONTRACT ACT (1872) S 69

Mukherjee, J J) GOSTA BEHARI DUTTA v JIBAN MALL 43 C W N. 852

—S 69—Scope of

S 69 of the Contract Act is intended to include the cases not only of personal liability but all liabilities to payments for which owners of lands are indirectly liable, those liabilities being imposed upon the land held by them. It is not a correct view to take that the section is restricted only to a case of personal liability (*Bennet and Verma, J J*) 118 N S W. 1000 (1939) Pat 411 SINGH

—Ss 72 and

Electricity Supply

valid rules—Right to refund See CONTRACT ACT, SS 21 AND 72 181 I C 345 = A I R 1939 Pesh 8

—S 73—Party claiming damages—Duty to mitigate damages

To maintain suit for damages for breach of contract it is the duty of the party claiming the same to perform his part of the contract and mitigate the damages and put forward the accounts of his loss and his damages must be on this basis (*Addison and Ram Lal J J*) GHULAM HAIDER v IQBAL NATH

181 I C 130 = 12 R L 167 =

A I R 1939 Lah 118

—S 74—Penalty—Kabuliyat—Provision for 6½ per cent interest per mensem in case of even petty defaults—Power of Court to relieve against—B T Act, S 179—If bars powers of Court to reduce rate of interest See BENGAL TENANCY ACT S 179 1939 P W N 220

—S 74—Penalty—Mortgage—Instalment bond—Default clause—Provision for compound interest at 12 per cent—If penal

A mortgage deed provided that the sum of Rs 2000 which was borrowed thereunder should be paid in eight annual instalments of Rs 250 each such instalments to count both towards principal and interest on the entire sum. It was further provided that in default of payment of sum due in any instalment the sum remaining unpaid should be added to the principal and the entire amount become payable at once in a lump with interest at 12 per cent per annum with yearly rests.

Held, that the stipulation for payment of compound interest at 12 per cent per annum was a clear penalty and could not be enforced (*Pindrang Row and Venkata*)

—S

Compound interest at 18 per cent—If penal

A stipulation in a mortgage deed for compound interest at 18 per cent cannot be held to be a stipulation by way of penalty when it is not a rate in excess of and outside the ordinary and usual stipulation (*Harries C J and Manhar Lal J J*) MUKTESWAR TRIGUNAIT v SATYA CHARAN SRIMANI 180 I C 109 = 5 B E 338 = 1939 P W N 256 = 11 E P 449 = 20 P L T 343 = A I R 1939 Pat 360

—S 74—Penalty—Mortgage bond—Provision for interest at lower rate—Date fixed for payment—in default mortgagee to recover amount of principal and interest by suit—Further provision for increased rate of interest in case of default of payment on due date—If penal

CONTRACT ACT (1872) S 134.

heirs and representatives would be competent to recover the same from the person and properties of the mortgagor, his heirs and representatives by bringing a suit. Then followed a further stipulation that in case of non payment on the due date interest would run at Rs 140 per cent per mensem and that the mortgagee would recover interest at 1½ per cent per mensem after the expiry of the said due date etc.

Held, that the stipulation for higher interest after

to the original rate stipulated for in the primary contract. (*Rowland and Manhar Lal J J*) NANHAK SINGH v. RAM LAGAN DUBEY 183 I C 866 = 5 B E 1009 = 12 R P 209 = 20 P L T 743 = 1939 P W N 319 = A I R 1939 Pat 457

—S 73—Penalty—Pledge—Agreement that it would be irredeemable after certain time

An agreement that the pledge should become irredeemable if not redeemed after a certain period, although it may be an unfair agreement would not in itself constitute an agreement by way of penalty unless the value of the thing pledged is so very much larger than the amount of the loan that it would become obvious that the clause is really inserted as a means of bringing pressure upon the pledgor to repay the loan within the contracted time (*Mackney J*) DWARIKA v BHAGWATI A I R 1939 Rang 413

—S 126—Contract of guarantee—What amounts to

Where A tells B that he may safely do business with C, as he was helping them with finance and taking goods from him that falls far short of a guarantee (*Leach, C J and Midkhan Nair, J*) MAHOMED SHANSU DIN RAVUTHAR v SHAW WALLACE & CO

I L R (1939) Mad 282 = 184 I C 153 = 12 R M 414 = 49 L W 313 = 1939 M W N 209 = A I R 1939 Mad 520 = (1939) 1 M L J 509

—S 133—Applicability—Surety for appearance of defendant arrested before judgment—Return of plaint for presentation to Court having jurisdiction—Surety—If discharged—Plaint represented in proper Court—Surety bond—If covers new suit See C P CODE, O 38 R 2 50 L W 426

—S 133—Discharge of surety—Breach and varia

spect of which a surety had the share of a partner was limited to a certain amount and according to the terms of the partnership deed it was stipulated that when losses occurred the partnership was to be dissolved forthwith, the continuation of the business after losses were incurred on an extended scale by amalgamation with another concern and the addition of new dealings to the business of the new concern thereby changing the character of the original business constitute not only breaches but also variation of the terms of the contract and exonerate the surety from liability (*Addison and Ram Lal J J*) JOWAND SINGH v TIRATH RAM 183 I C 740 (2) = 12 R L 133 = 41 P L R 47 = A I R 1939 Lah 193

—S 134—Applicability—Decree against principal and surety—Effect—Release of principal debtor before the Debt Conciliation Board—Surety if can claim to be

re a decree is passed both against the principal and the surety, the surety becomes a judgment debtor. His debt becomes a debt of record. The contract has merged in the decree. Hence

CONTRACT ACT (1872), S. 131.

Suit against trustees and a guarantor—Substitution of new trustees and striking out of old ones—Effect—Surety if relieved of his liability

A surety is discharged if the creditor, without his consent, either releases the principal debtor or enters into a binding arrangement with him to give him time. In

is. S. 139 only applies where the eventual remedy of the surety against the principal debtor is impaired. Under S. 134 the surety is discharged if, and only if, a contract has been entered into by which the debtor is released or if there has been any act or omission on the part of the creditor the legal consequence of which has been to discharge the principal debtor. Where a plaintiff sued on a building contract certain trustees of a temple and a guarantor but later on as those trustees were removed applied for the substitution of the new trustees in place of the old ones and they were so substituted the old ones struck out and the suit was continued against the new ones and the guarantor it was held that as the only result of striking out the original trustees from the action was to preclude the bringing by the plaintiff of a fresh suit in respect of the subject-matter against them, and was not a release or discharge of the principal debt, the debt remained a debt though the creditor by reason of a rule of procedure could not bring an action upon it. It was further held that under the circumstances there was nothing in S. 134 to discharge the liability of the surety and that the plaintiff's act in continuing to sue the surety, though he withdrew his action against the principal debtors, was a clear

CONTRACT ACT (1872), S. 194.

and therefore must cover the consequences of negligence. But where the true contract as made at the time of acceptance of the offer is that the bailee is to keep or hold the property for a reasonable time as an ordinary bailee, it is not open to the latter to alter that contract until a reasonable period has expired and to add a new term to the contract by

A.I.R. 1939 BOM. 101.
—Ss 160 and 148—Government Promissory note deposited with Collector by company owning private bonded ware house—Note not endorsed to company—Company's right to its return on cancellation of excise license—Government, if can plead interest of endorsee—Note attached by Government under S 88 (3) (c), Cr. P. Code, against endorsee—Effect

Government becomes the bailee of the note within the meaning of S. 148 of the Contract Act. Under S. 160 of that Act, the Government are under a duty to return it without demand on the cancellation of the company's excise license, when the company is not under any liability to Government in respect of the bonded ware-house, although the note had not been endorsed to the company at the time of the deposit. The Government being bailees, are not at liberty to refuse to return it pleading the interest of the person in whose name the endorsement stands. An order of attachment of the note obtained by Government under S. 88 (3) (c), Cr. P. Code, against the endorsee is no bar to a decree for the return of the note to the company. (Ponckridge, J.)
REEMAH EZEKIEL v. PROVINCE OF BENGAL

I.L.R. (1939) 2 Cal 52—A.I.R. 1939 Cal 746,
—S. 172—Profits accruing from immovable property—If can be pledged. See T.P. ACT, S. 58

A.I.R. 1939 Lah 15
—S. 182—"Agent"—Ajahat gamasta collecting fees for Deshmukh of village—If agent of Deshmukh. See LIMITATION ACT, S. 10. 41 Bom L.R. 215

—S. 188—Authority to receive payment—If implies authority to sue for it

Where a person has been authorised to receive refund of octroi duty from the Municipal Board cannot be deemed to have also the authority to adopt any legal process for recovering the amount. A right to receive is different from a right to recover. (Mulla, J.)
MUNICIPAL BOARD, JAUNPUR v. BANWARI LAL

Generally an agent cannot without authority from his

—S. 131—Discharge of surety—Suit against insolvent debtor without leave of Court—Surety if released from debt

Failure to obtain permission of the Insolvency Court before suing the debtor who had been adjudicated insolvent, does not release the sureties from the debt. (D. R. Norman) SHANKAR LAL v. BHANWAR LAL
1939 A.M.L.J. 81

—Ss 134 and 137—Remedy against principal debtor barred—Surety, how affected.

A surety is discharged when at the date of the creditor's remedy against the debtor has become barred by time. (D. R. Nau Kang Rai v. SITA RAM

1939 A.M.L.J. 66
—Ss 151 and 152—Liability of bailee—Right contract out of obligation—Contract to keep prop for reasonable period as ordinary bailee—Right to new term absolving from liability.

CONTRACT ACT (1872), S 196

principal in the same way as the agent himself. Where a banking concern is appointed an agent with very wide powers in the matter of letting out certain buildings in the city, it can well be inferred that the concern had

—S 196—*Applicability—Contracts forbidden by law—Ratification—Conditions of validity—Delay—Effect*

act purported to be ratified and not after the expiry of the period for which the option was open or long after the expiry of the period if any, for the purpose of the said Act.

—S 220—Construction and scope—Misconduct of agent—Effect on right to commission—Proof of loss to principal—If necessary for deprivation of commission—Principles.

There is no warrant for holding that an agent's claim to remuneration is not affected by his misconduct unless it is also shown that the principal has incurred loss thereby. Nor is it correct to hold that even where loss had been caused to the principal it would be sufficient if the agent is directed to make good the loss the fact

misconduct A principal is entitled to have an honest

thereby, but also forfeit all his cor-
chariar and Abdur Rahman
ANANDA RAO v. GOPALA RAO S

—S 233—*Scope and effect—*
Principal

WALLACE & CO I L R (1939) Mad 282 =
184 I C 153 = 12 R M 414 = 49 L W 343 =
1939 M W N 209 = A I R 1939 Mad 520 =
(1939) 1 M L J 509

—B 239—*Firm if can be member of a partner*
ship

According to the provisions of S 239 of the Contract Act partnership can be the outcome of combination of persons and as a firm is not an entity, a firm as such cannot be a member. But there is nothing in law to bar individuals

CO OPERATIVE SOCIETIES ACT (1912). S 20

members from entering into partnership with other in-
dividuals (*Iqbal Ahmad, Allsop and Bajpai JJ*).
CHANDRIKA PRASAD RAM SWARUP v COMMISSIONER OF INCOME TAX 182 I C 845=12 R A 58#
1939 A W R (H C) 479=1939 I T R 269=
1 J 419=A I R 1939 All 341 (F B).

11—Partnership—Partner carrying on
12—Partners consenting to and knowing
drawn from partnership for separate
trade—Profits of latter—If divisible—Interest on
advances—Right to

A partner is not precluded under S 259 of the
th the
such
awing
such
wh in
iness

there is no justification for claiming the profits of that partnership. On the basis of the relationship being one

CONTRIBUTION *See also* PARTNERSHIP

—*Claim to—Award of interest—Power of Court*

A claim for contribution has always been recognised as falling within the equitable jurisdiction of the Court, and on such a claim a Court of equity will award interest at a reasonable rate from the date of payment of the amount by the plaintiff in respect of which contribution is claimed. (*Pandrang Rao and Krishnaswami Ayyangar, JJ.*) RAMANATHAN CHETTIAR v. PALANIAPPA CHETTIAR

Mad 776=49 L W 132=
=A I R 1939 Mad 531

ce against two partners—
sue for contribution from
ground of partnership—If

Where the basis of a claim for contribution is a joint

by the plaintiff
based on the
is liable to con
operate as a bar
for contribution
up or intimately
that it would
at as between
r contribution.
DI v MUTHU
W 547 (2)=

A.I.R 1939 Mad 608 = (1939) 1 M.L.J. 825.
 — Partnership—Joint decree passed against some of partners of firm in respect of del t contracted by them
 — One of judgment debtors paying entire amount—
 Right to sue rest for contribution—Partnership debt and separate debt —Test *See PARTNERSHIP—CONTRIBUTION*
 43 CWN 1214

CO-OPERATIVE SOCIETIES ACT (1912), S. 23.

—Ss. 23 and 24—Award against estate of past or deceased member—Jurisdiction of liquidator and of Civil Court

A liquidator has no jurisdiction to award anything against the estate of a past or a deceased member, because of the limitation provided under Ss. 23 and 24 of the Co-operative Societies Act. The Civil Court has jurisdiction to go into the question whether the liquidator had jurisdiction to make the award. (*Dalip Singh, J.*) AHMAD ALI v CO-OPERATIVE SOCIETY OF FANIPET. 41 P L R 269

—S. 42 (2) (b)—Certain members adjudicated insolvent—Liquidator not appointed until after discharge—Power of liquidator to fix their liability.

Where a Co-operative Society is dissolved and certain members are adjudicated as insolvents their liability as members is not provable under the terms of S. 34 (2), Provincial Insolvency Act, if no liquidator was appointed until after the insolvents had been discharged. Under S. 42, Co-operative Societies Act, it is the liquidator alone who can ascertain and fix the liabilities of the members. Therefore until a liquidator is appointed, it cannot be said that there was any debt or liability certain or contingent which can affect the members. Hence the liquidator is not debarred under the provisions of the Provincial Insolvency Act from fixing the liability as member. BAHIMI QA

—S. 4:
‘Member’

dissolution of the society in S. 42 (b) (*Dalip Singh, J.*) ANJUMAN IMDAD BAHIMI QARZA v IMAM DIN. 183 I C 632—12 E L 124—A L R 1939 Lah 275.

—S. 42 (3)—Powers of liquidator—Power to ask person summoned to furnish security—Punjab Government Rules, R. 26 (e)

Although S. 42 (3) of the Co-operative Societies Act gives the same power to the liquidator to enforce attendance of witnesses and production of documents as is given under C. P. Code, that power is subject to the rules framed under the Act R. 26 (e) of the Rules framed by the Punjab Government restricts the powers of the liquidators to those given in the sub rule. A liquidator has, therefore, no power to ask a debtor of the society under liquidation summoned by him to furnish security for his appearance or to impose a sentence of imprisonment or fine for his failure to do so. (*Bhidi, J.*) HAKIM, *In the matter of*.

I L R (1939) Lah 192 = 183 I C 414 = 12 R L 114 = 40 Cr L J 791 = 4 P L R 269
A I R

—S. 43—Reference to Registrar
Jurisdiction of Registrar to decide if barred.

On a reference made to the Registrar under the Co-operative Societies Act, that as a Court and he has jurisdiction to decide whether a dispute before him is time barred or not. Once he has decided that rightly or wrongly, it cannot be said that he acted without jurisdiction. (*Faiz Ali and Varma, JJ.*) SHEOHS TIVE SOCIETY

—S. 43—
certificate by
Jurisdiction.

The Co-operative Societies Act nowhere gives any power to the Commissioner or any other Revenue Officer to examine or revise the proceedings of the Registrar or other officer of the department. A Revenue Court has no

Y. D. 1939—24

CO-OWNERS.

jurisdiction to question and disregard an award given by the Registrar of Co-operative Societies and the certificate issued to the Revenue Courts for recovery of the amount under the award, in pursuance of R. 33 of the rules framed under S. 43 of the Co-operative Societies Act. (*Horton, F. C.*) BORDA CO-OPERATIVE SOCIETY v. YADAO. 1939 N L J 405.

—S. 43 (1)—Award made without jurisdiction—Objection, if can be raised in execution proceedings—Objector's remedy.

Where an award made under the Co-operative Societies Act is alleged to have been made without jurisdiction and not according to the terms of the Act, it is open to the person aggrieved to bring a suit to that effect but such objections cannot be taken in the execution proceedings started in pursuance of the award, the objector's remedy being an appeal to the Registrar. (*Shemp, J.*) BALWANT SINGH v. ANJAMAN IMDAD BAHIMI QARZA. 180 I C 242 = 11 R L 666 = 41 P L R 225 = A I R 1939 Lah 40.

—S. 43 (2) (1)—Dispute—Meaning

Where a Co-operative Society has considered its treasurer to be responsible for embezzlement of money deposited with it by a person and the treasurer has throughout contended that he was not concerned with the alleged embezzlement there is clearly a dispute be-

CO-OWNERS — Adverse possession — Essentials — Mahomedan Law — Co-heirs under — Position of — Alienee from some co-owners — Possession of — If adverse to others. See ADVERSE POSSESSION—CO OWNERS.

I L R (1939) Kar 597.

—Alienation by some—Suit for partition by others — Equities—Several sales by particular co-owners—Earlier purchaser—If entitled to priority over subsequent purchaser—Rule—Contribution among purchasers

In a suit for partition by one or more co-owners against the others and alienees from some of them, where the alienations are not binding on the plaintiffs, the Court, as a rule of equity, would generally allot to the alienees what their alienors sold or purported to sell, if that can be done, so that the alienees can get what their alienors sold or purported to sell to them. But where there are several such alienations, the alienees under an earlier sale have no priority over the subsequent purchaser in respect of the property sold, where the estate

—Joint land—Lease by co-owners to tenant for term—Tenant holding over after term—Suit by one co-owner only—Maintainability—Suit by all co-owners — Necessity

owners of property, and the tenant continues on sufferance after the expiration of the period of tenancy, a suit to eject the tenant holding over brought by any one only of the co-owners is maintainable. The position of ten

CO-OWNERS.

on sufferance is akin to that of a trespasser, and one of several co-owners can maintain an action to eject a trespasser who has been holding wrongfully. (*Broomfield, Ag. C. J. and Sen, J*) **YESHWANT BAI KRISHNA v. KESHAV ANANT.** 41 Bom L R 1213

—Land acquisition case—One if can give valid discharge for another interested in the land See **LAMBARDAR.** 1939 A.W.R. (P.C.) 58

—Wall erected by one on top of joint wall—If joint 39 Lah 28, not used—

There cannot possibly be a transfer of copyright or assignment of copyright in a non existing work. Where there is no proof that the work was substantially completed at the time when document transferring copyright was drawn up and on the face of it the document refers to a future work copyright cannot be transferred. (*Dalit Mohai*)

T. P. A

1939 A L J 71=1939 A W R (H C) 121

—Infringement—Burden of proof

In an action for infringement of copyright for the defendant to prove that infringement. It is for the plaintiff lies, to prove that in fact there is infringement. (*Wadia, J*) **PERFORMING LTD v. INDIAN MORNING POST R L R** (1939) Bom 295=184 I C 6

41 Bom L R 530=A I R 1939 O W N 136
—Nature of—Assignment—Registration—Necessity. See T P ACT, S 54—APPLICABILITY—TRANSFER OF COPYRIGHT 1939 A L J 71

COPYRIGHT ACT (1911), S 1 (2)—'Authorise'—

the defendant alleges that he was not aware of the

if entitled to sue for joint possession

The tenant or raiyat has a disposing over only so far as the materials of his house built on the village site are concerned and has not a transferable interest in the site of the house. The fact that the transfer is in favour of one of the co-sharers, has not the effect of

CO SHARERS

depriving the other co-sharers of the right to the joint possession of the site. The retention of possession by such a co-sharer furnishes the others with a cause of action for a suit for joint possession of the site by removal of the materials. The question of special damage does not arise, for the cause of action in such a case is constituted by the invasion of the right of the co-sharers to joint enjoyment of the site of the house. (*Iqbal Ahmad J*) **DARSHAN SINGH v PRAG SINGH.** 1939 A.W.R. (H C) 840=1939 R D 612

—Adverse possession—Need for proving ouster. 1939 O W N 1039

Proof of ouster—Necessity by one against another
ence of title in plaintiff, if

certain persons jointly as
e must oust the other before
e to him. But where both

are joint trespassers, as where they were purchasers under a sale which conveyed no title, one can oppose the title of the other in a suit for partition by the other. (*Alltop, J.*) **ATTAR SINGH v ASA RAM**

1939 A W R. (H C) 728=1939 R D 574=

A I R 1939 All 732

'father—All sons not

cedings—Share, if ex

rent is passed against
a father and on his death only one of his sons is brought
on record as his legal representative in the execution

—Exclusive possession—Basis of right—Change in the nature of possession—Rights of co-sharers to object to the change.

One of several joint owners cannot erect a building

co-sharers have a right to object to the change. The of a building on a plot used as sahan hange the method of exclusive possession as such the other co-sharers would be rights to object even in the absence of ct injury to them. (*Radha Krishna Sri-* **RADHEY LAL v. MAHARAJ KUNJ**

184 I C 136= 1939 A W R (O C) 185=12 R O 83= 76=1939 O A 725=1939 O L R 590= 9 O W N 863=A I R 1939 Oudh 276

y one co-sharer—Remedy of other co-

sharers.

It is perfectly open to a co-sharer to grant a lease of the joint holding. If the other co-sharers are dissatisfied with it, their remedy is to institute a suit for partition. (*Henderson J.*) **BHARANI KANTA RAY v. RAJAGOPAL LAL.** 70 C L J 199.

CO-SHARERS.

Liability to ejectment—Taking of possession by lambardar after ejectment of tenant—Taking thereafter by co-sharer without lambardar's consent.

Where a lambardar has taken actual possession of a tenant under S. 79 of the Tenancy Act, any co-sharer who thereafter takes possession without the consent of the lambardar renders himself liable to ejectment. (*Masik, S.M., and Mehta, J.M.*) **HANIR SINGH v. HET SINAH.** 1939 R D 604=

1939 A W R (B E) 290.

Liability to pay money order and registration charges incurred by the lambardar.

Where the co-sharers are living away from the place or at a place different from that of their share of the profits have only to and as such, money order and registration connection therewith have only to be borne by them. (*Pollock, J.*) **DHUNDIRAJ v. GANPAT.**

181 I C 915=11 B N. 492=

1939 N L J 140=A I R 1939 Nag 121.

Mutual relation—Default by some co-sharers in payment of land revenue—Revenue sale of whole estate—Co-sharer by agreement with purchaser obtaining property sold—Right of others to re-conveyance.

In an estate the zamindari right was vested in a number of persons and separate accounts had been opened under the Bengal Land Revenue Sales Act. In certain year some of the co-sharers made default in the payment of their share of the land revenue and consequently the whole estate was put up for sale. Certain co-sharer by an arrangement with the purchaser obtained from him the property sold in the revenue sale with a view to avoid some part of the disaster of a sale. He was not

CO-SHARERS KNEW AT AN EARLY STAGE THAT THE SALE COULD NOT BE PREVENTED AS THE ARREARS OF REVENUE HAD NOT BEEN PAID. FURTHER, HE DID NOT DO ANYTHING TO PREVENT HIS CO-SHARERS FROM BECOMING POSSIBLE BIDDERS.

Held, that as fraud or bad faith towards his co-sharers had not been proved the other co-sharers could not claim to recover their former interest in the estate by paying proportionate portion of the purchase price. (*Sir George Rankin*) **ANATH NATH BISWAS v. DWARKA NATH CHAKRAVARTI.** 43 C W N 529=

11 E (1939) Kar 149 (P C)=181 I C 380=

1939 O L R 340=5 B E 651=69 C L J 505=

11 E P C 262=20 Pat L T 359=

A I R 1939 P C 86 (P C)

Partition—Private partition of Sir plots—Effect on the rights of one with reference to the other—Right to sue trespasser—possession.

A private partition of Sir plots not the effect of destroying the right of ownership of any one of them in the plots allotted to the others. As such any one of them can sue to eject a trespasser on a plot allotted to another co-sharer. But he is not entitled to joint possession but only to a declaration of title as joint owner with others. (*Brennet and Verma, J.J.*) **HALDAR UPADHYA v. RAY SUMAR UPADHYA.**

182 I C 309=11 R A 651=1939 R D 169=

1939 A L J 171=1939 A W R (H C) 249=

A I R 1939 All 332

Partition—Right to maintain suit—Stranger purchaser of co-sharer's share.

A stranger purchaser of the share of a co-sharer in a joint property is entitled to maintain a suit for partition on the principle that he is in constructive possession of

CO-SHARERS.

Remedy against another co-sharer—Ejectment or partition.

It is a well known principle of law that one co-sharer cannot bring a suit for ejectment against another co-sharer. His remedy is by way of a suit for partition. (*Thomas, J.*) **ALI RAZA KHAN v. NAWAZISH ALI KHAN.** 1938 O A 845=1938 O W N. 1157.

Right to alienate—Exchange by one co-sharer of his share upon without consent of others—If open to

Where one of the co-sharers transfers by a deed of exchange specific plots appertaining to a joint khewat and the other co-sharers were in no way concerned with it and did not at any time object to it and where it was acted upon and the parties were put in possession of their respective plots it is not open, in a suit by one of the parties to declare that he is the owner of the plots in his possession for the other party, to raise a point which might have been available to the other co-sharers at the time of transfer that the deed of exchange is invalid as some of the co-sharers had not been parties to the exchange. (*Islam, J.*) **KASHI NATH v. MAKCHHEDE.** 184 I C 233=12 R A 202=

1939 A W R (H C) 373=1939 A L J 384=

A I R 1939 All 504.

Right to alienate—Person in exclusive possession

Where a co-sharer has been in exclusive possession of the property or hindrance by other third person, subject to obtain a partition of the property. **IPAL SINGH v. MATA.** 1939 A W R (H C) 373=1939 A L J 384=

1939 O W N. 773=1939 O A 627=

1939 O L R 530=A I R 1939 Oudh 243

Right to contribution—Rent decree obtained after interest of co-sharer tenure holder is sold in execution of mortgage decree—Amount realised from another co-sharer personally—Liability of former to contribute to latter.

Where some time before a rent decree was obtained by the landlord the interest of a co-sharer tenure-holder was sold in execution of a mortgage decree, and the landlord proceeded against the judgment debtors personally and realised the entire decretal amount from another co-sharer, it is certainly open to the latter to sue for contribution and the on the purchaser at the sale. (*on the purchase at the sale and Roxburgh, J.J.*) 43 C W N. 940.

Right to inter se—Right of one to build on or let out for building purposes joint land—Absence of consent of others

One of several joint owners of land is not entitled to erect a building upon the joint property without the consent of the other co-sharers, notwithstanding that the erection of that building may cause no direct loss to the other joint owners. If he cannot build he cannot let out any portion of joint land for the purpose of building. (*Radhakrishna, J.*) **AMJAD ALI KHAN v. BISMILLAH.** 184 I C 266=1939 O W N 911=

1939 O L R 587=1939 A W R (C C) 214=

12 R O 88=1939 R D 590=1939 O A 776.

Right to recover property from trespasser—If can assert right in whole property.

CO SHAREERS

The right of a tenant in common to recover the whole property as against a trespasser is a right which he is entitled to assert only on behalf of himself and his co tenants. He cannot do so in the assertion of a right to the whole property in himself (*Thomas J*) **ALI RAZA KHAN v NAWAZISH ALI KHAN**

1938 O A 845=1938 O W N 1157

—Right to share in commission paid to the lambardar

The lambardar receives one commission on the land revenue assessed in a mahal and another commission on the land revenue assessed on the *Malik makhdous*. This commission is given to him not as a proprietor of the village but to compensate him for the trouble he has in collecting the money. Neither forms part of the village assets and in neither have the co sharers any right (*Pollock J*) **DHUNDIRAJ v GANPAT**

181 I C 915=11 E N 492=1939 N L J 140=
A I R 1939 Nag 121

—Shamilat land—Exclusive possession of portion—Right of co sharer

One co sharer may under certain circumstances take and keep exclusive possession of a portion of *shamilat* land for his own use until partition and another co sharer is not by reason of the land being *shamilat* necessarily entitled to disturb his possession. The commonest instance of the right of exclusive possession occurs when a co sharer may break up and cultivate a portion of the *shamilat* and take the produce for his own benefit. The principle is precisely the same when a plot of *shamilat* is used as a *bara* or for any purpose other than cultivation (*Abdul Rashid J*) **LAKHMIR SINGH v SADHU**

41 F L R 109=
A I R 1939 Lah 288

—Shamilat land—Partition—Land reserved for common purpose—Building erected thereon by some of co sharers—Right of others to its demolition

If the *shamilat* land of a village has reserving only special areas for common (*ex*) land reserved as an appendage to the proprietors can alter the condition of property without the consent of all the co sharers. If they erect a building thereon without the consent of the others the latter can demand its demolition (*Shimp J*) **SUNDAR SINGH v HARNAM SINGH**

41 F L R 587=A I R 1939 Lah 514

—Six lands—Holding of, in severalty—If indicates ownership—Position of person in possession—His rights

co sharer in possession cannot resist it. It follows that his transferee could not be in a better position (*Stone, C J and Clarke J*) **ANANTRAM v PUNA**

1939 N L J 92

—Suit by one for whole rent—When permissible

Where by local custom one of the co sharers acts as agent on behalf of the whole body of co sharers and realises the whole rent from a tenant then that co sharer can sue alone without the other co sharers for arrears of rent (*Marsh S M and Mehta J M*) **SHIV SAGAR PANDE v LUCHMAN KOERI**

1939 B D 598=

1939 A W R (B R) 258

COSTS

—Suit for ejectment by one only—When main claimable

Where by mutual agreement amongst two brothers, co sharers particular plots had been allotted to a particular brother, and that brother alone files a suit to eject a sub tenant in respect of those plots the suit is not bad where there is evidence to show that it was filed with the consent of the other brother and the defendant is liable to ejectment in that suit (*Marsh, S M and Mehta, J M*) **SHUGAN CHAND v JAGRAN**

1939 R D 603(2)=

1939 A W R (B R) 273(2)

—Suit by, to recover revenue paid—Presumption if any that each has paid a portion See C P CODE, O 22 RR 3 AND 11

1939 O W N 711.

—Transfer by one of more than his share—Possession also delivered—Effect—Ouster of the other—Remedy—Limitation

Where one of two coparceners transfers a share, which is more than his own and follows it up by giving actual possession to the transferee that constitutes an ouster of the other coparcener and as the transferee would acquire adverse possession as against that coparcener he would have to bring his suit within 12 years of the ouster. If the transferee is a sole zamindar the limitation would only be 6 months whereas, if he is one of several zamindars his possession can be contested within 12 years as prescribed by Art 142 Limitation Act (*Mehta, S M*) **MANIK AHIR v AJIQA AHMAD**

1939 R D 1=1939 A W R (B R) 111

COSTS See also (1) C P CODE S 35
(2) CR P CODE, S 148
(3) PRACTICE

—Appeal—Summary dismissal by appellate Court

—Appeal to High Court successful—Order as to costs—Practice—Costs of first appeal—If allowable

Where an appeal to the High Court against the sum-

41 Bom L R 949=A I R 1939 Bom 493

—Award of—Suit dismissed with costs—Separate sets of costs to different defendants—If justified—Bombay High Court Civil Circulars 1925, Ch VIII

Where a plaintiff's suit is dismissed with costs the order as to costs must mean that the plaintiff is to pay

12 R B 162=41 Bom L R 575=

A I R 1939 Bom 338

—Discretion—Suit for infringement of design—Defendant admitting plaintiff's right and offering to submit to injunction and to pay profits and costs—

Refusal of offer by plaintiff—Suit finally decreed in terms of defendant's offer—Costs—Liability for—Rule

See C P CODE O 24 41 Bom L R 290

—Liability for—Suit on behalf of plaintiff—Dismissal with costs—Absence of direction for payment of costs by next friend—Liability of estate of minor See

DECREE—CONSTRUCTION 41 Bom L R 521.

COSTS.

—Mortgage suit—Discretion of Court—Rule—Order for costs—Appeal. *See* C. P. CODE, O 34, R. 10 1939 M.W.N 288

—Practice—Act—Rules as to S. 66(3)

COURT FEE—*appellate Court.*

If the defendant is not made up, to prepare or sign its d (Bhide, J.) Kist

—Determination—Basis of—Plea of defendant—If material—Facts found as pleaded by defendant—Proper procedure—Jurisdiction—Forum—Determination

The court fee payable on a plaint in a suit and the forum of trial depend on the allegations made in the plaint and not on the defence set up by the defendant. If the plaintiff can prove his allegations he would be entitled to the relief on the lines that he has claimed, and the forum of trial is the Court in which he has brought the suit. The fact that the defendant sets up a different title cannot alter the nature of the plaintiff's claim. If the facts are found to be as pleaded by the defendant, the proper course is to dismiss the suit and not to convert the suit into another of a different character. (Roulant, J.) DEOKI SINGH v. RAMSEWAK SINGH. 182 I.C. 178 = 5 B.R. 723 = 12 R.P. 2

—Determination—Criterion—Substance of relief claimed

It is the substance of the relief claimed in the plaint that must be looked to in questions of court fee and jurisdiction (King, J.) KAYATHAN ROCHE v. CHINNAYYA ROCHE. 1939 M.W.N 1114 = A.I.E. 1939 Mad 435 = (1939) 1 M.L.J. 425.

—Determination—Relief available at time of filing of plaint—Further relief due to change of circumstances—Procedure.

Court fee is paid on the relief available at the time of the institution of the suit, but if after its institution circumstances change and it becomes necessary for the plaintiff to ask for any further relief to him to apply to the Court plaintiff by adding new relief and fee thereon (Bhahamed Noor BIRJA RAJKUMARI v. BISHWA NATH KUMARI 182 I.C. 743 = 5 B.R. 818 = 12 R.P. 64 = 20 Pat L.T. 818 = 1939 P.W.N. 61 = A.I.R. 1939 Pat. 219

—Refund—Inherent jurisdiction of Court.

The Court has inherent jurisdiction to order a refund of court-fee even in cases which do not fall within Ss. 13, 14 and 15, Court Fees Act. Where there has been no real trial of the main issues involved in the case in both the Courts below, the appellant is entitled to a refund of court fee paid by him in the lower appellate Court on the memorandum of appeal (Aidul Rashid, J.) HARI RAM & SONS v. H. O. HAV 41 P.L.R. 796 = A.I.E. 1939 Lah 257.

COURT FEES ACT (VII OF 1870, as amended in Bihar and Orissa). S 7 (iii) (iv) (c) and (v)—Scope and effect—Suit for partition—Allegation that share allotted at prior partition was of less value than that to which he was entitled—Court-fee payable—Valuation.

In Bihar and Orissa, so far as a partition suit is actually in the nature of a title suit, court fee is payable by the plaintiff, whether regarded as governed by S 7 (iii) or S makes no practical difference whether the suit

COURT FEES ACT (1870), S. 7.

regarded as a suit for declaration with consequential relief falling under S. (iv) (c), or a suit for possession of moveable and immoveable property governed by S. 7

stated that he was in possession of what purported to be his share in the property, but that the same was of less value than the property to which he was entitled. He wanted the unfair partition, which was effected by an unregistered deed, and chittas to be set aside and that his proper share allotted to him. He paid a court-fee of Rs. 15 on his plaint, it was alleged in the plaint that the share allotted to him and of which he was in possession was in deficit by Rs. 8,775

Held, that the plaintiff should pay *ad valorem* court-fee on the amount of Rs. 8,775 which was the amount by which his share in possession was in deficit of the share which he claimed, but that he need pay such court-fee on the value of the whole property which would fall to his share. (James and Rowland, JJ.) SITAL PRASAD SAH v. RAMDAS SAH 18 Pat. 267 = 183 I.C. 281 = 5 B.R. 693 = 12 R.P. 122 = 1939 P.W.N. 197 = A.I.R. 1939 Pat. 274.

—(as amended in Madras), Ss 7 (IV A) and (v)—Applicability—Suit for cancellation of deed of conveyance and for possession of property comprised therein—Valuation—Court-fee payable.

In a suit for cancellation of a deed of conveyance and for possession of the property, falling under S. 7 (IV-A) of the Court-Fees Act, as amended in Madras, the proper method of calculating the value of the subject-matter is the market value of the property on the date of the plaint. The valuation should not be in accordance with S 7 (v). (Leach, C. J., Krishnaswami v. J.J.) KUTUNBA SASTRI v. I.L.R. (1939) Mad. 784 = 12 R.M. 232 = 49 L.W. 566 = 407 = A.I.R. 1939 Mad. 482 = (1939) 1 M.L.J. 702 (F.B.).

—S 7 (iv) and Sch II, Art 17 (iii)—Applicability—Declaration and injunction

Sch II, Art 17 (iii), Court Fees Act, only applies when no consequential relief is sought where consequential relief by way of injunction is asked for then S. 7 (iv) applies and *ad valorem* court fee on the value of the claim has to be paid, a single valuation covering both declaration and injunction. (D.R. Norman.) PUKH RAJ v. RAM JEEWAN. 1939 A.M.L.J. 80.

—(as amended in Madras), S 7 (IV A) and Sch II, Art 17 A (1)—Suit under S 53, T.P. Act—Court fee payable—Prayer for cancellation of deed—It involved

It is clear that the proper prayer in a suit by the creditors of a person under S.53 of the Transfer of Property Act is a prayer for a declaration that the alienation

COURT-FEES ACT (1870), S. 7.

1939 M.W.N. 778—A.I.R. 1939 Mad 894—
(1939) 2 M.L.J. 400

—S 7 (iv) (b) and Sch II, Art 17 (vi)—*Kela*
title applicability.

S. 7 (iv) (b) of the Court Fees Act will not apply to cases where the plaintiff is in joint possession of the joint family property but it must apply to cases where he is out of possession of it and seeks partition. In the former case the court fee is levied under Art. 17 (vi) of Sch II. (*Thomas, C.J. and Radha Krishna, J.*)
DURGA BUX SINGH v AMBIKA BUX SINGH

184 I.C. 371—12 B.O. 102—1939 O.L.R. 607—
1939 O.W.N. 1055

—S 7 (iv) (b) and Sch II, Art 17 (vi)—*Suit*
by Mahomed in co owner in joint possession for partition
—*Court fees.*

Where there is a jointness of title, each coparcener is in possession of every portion of the joint property. His share is not defined and in such cases the mode of enjoyment is not capable of terms of money and therefore the residuary comes applicable. Such jointness of title exists in the case of a coparcenary proper where the shares of co owners are known and ascertained, a suit for partition is virtually a suit to enforce a right to a share in joint family property. Under the Mahomedan Law the share of each member of the family in the family property is specific and is known and the title of one member of such a family is not joint with that of another member. Hence a suit for partition with consequential relief and falls under S. 7 (iv) (c) of the Court Fees Act for purposes of court fee. (*Burn, J.*)
MANAITHUNAINATHA DESIKAR v GOPALA CHETTIAR
49 L.W. 270—
1939 M.W.N. 255—A.I.R. 1939 Mad 380—
(1939) 1 M.L.J. 317.

COURT-FEES ACT (1870), S. 7.

—S 7 (iv) (c)—*Applicability*—*Ex-communicated*
member of caste—*Suit for declaration of illegality of*
resolution ex-communicating him and of plaintiff's right
to enjoy caste property in common—*Prayer for per-*
manent injunction restraining caste members from
obstructing plaintiff's enjoyment of caste properties—
Valuation for court-fee and jurisdiction See **SUITS**
VALUATION ACT, S. 8 41 Bom L.R. 425.

—S 7 (iv) (c)—*Applicability*—*Suit for injunc-*
tion against co-trustees and for possession as joint
trustee—*Joint trusteeship denied*—*Declaration of joint*
trustee found necessary for right to relief—*Court fee*
payable.

Where a plaintiff in his plaint prays for an injunction against the defendants with whom he says he is a joint trustee to restrain them from interfering with his joint possession of the suit properties as joint trustee, and, if

Att. 1/ (vi) of Sch II. (*Adams and Kam Lal, JJ.*)
NISARG ALI KHAN v NAWAZISH ALI KHAN

—S 7

by junior co
of title to
prayer for
in possession
Amendment
—*Permitted*

The junior
estate brought
in for a declaration

plaintiff's suit, containing prayer for possession—*Court-*
fee payable

—S 7 (iv) (c)—*Applicability*—*Will attacked as*
invalid—*Cancellation, if*

on the ground that
it was void, but is also
void, and in such
cases for the cancella-
tion of the will, the
plaintiff has to be stamped
with the Court-Fee Act.
ALI NATH SINGH
= 1939 O.A. 225—
19—11 B.O. 225—
1 1939 Oudh 125.

Orissa). S 7 (iv)
—*Allegation by*
to declare invalid
—*Further prayer*
and for other reliefs
application for and
not valid making
able—*If suit for*

COURT-FEES ACT (1870), S. 7.

Plaintiffs, who were Hindu reversioners, brought a suit, alleging that they were the reversioners after the last male owner, and claimed a declaration that the widow of the last male owner (the first defendant) had on a limited interest of a Hindu widow in the inheritance and that certain alienations made by her without legal necessity would not endure beyond her lifetime and would not be binding upon the reversion. The plaintiffs also prayed that the suit be dec and that the plaintiffs might be allowed to which they were entitled. In the court the plaintiffs asked for an *interim* injunction to restrain the widow from making further alienations and the trial Court allowed the application and granted the *interim* injunction. The question of court-fee was raised, and the trial Court, holding that the fee of Rs. 15 paid as on a suit for a declaration without consequential relief was not sufficient, ordered the plaintiffs to pay *ad valorem* court fee under S. 7 (iv) (c).

Held, in revision, (1) that the suit as it stood was only purely for a declaration falling under Art. 17 of Sch. (C) of the Court-Fees Act as amended in Bihar and Orissa, (2) that the second prayer was the usual omnibus relief clause which appeared in every plaint, and the plaint could not be construed to declaration and consequential relief (iv) (c) of the Court Fees Act, mere omnibus relief clause appeared in plaintiffs applied for and obtained an *ad interim* injunction did not change the real nature of the suit, i.e., would not convert the suit which was a declaratory suit only into a suit for a declaration and consequential relief, (4) that the plaintiffs, who were only reversioners, had no right to possession until the death of the widow and in the suit they had therefore no right to anything beyond a declaration so long as she was alive, and had no right at all to ask for which should never have been granted to the suit being for a large number of

COURT-FEES ACT (1870), S. 7.

Held, that the proper method of valuing the suit was according to the injury or loss from which plaintiff sought protection, and that loss could not be valued at the total value of the properties in suit, though such a value might be proper if the plaintiff were out of possession or if the document sought to be cancelled denied her any right and title whatsoever; in this case since the

should *prima facie* be disposed to accept the same, and was not justified in demanding court-fee on the market value of the properties in suit.

Mohammad Noor, J.—There is a good deal of difference between a suit in which the plaintiff seeks to recover a property which is not in his possession and a suit in which he wants to avert the danger which is likely to come to the property which is already in his possession. To a suit of the second kind, a valuation on the basis of a suit of the first kind is wholly unjustified. (*Mohammad Noor and Rowland, JJ.*) DEOKALI KUARI v. MAHADEO PRASAD BHAGAT. 182 I.C. 153 = 5 B.R. 727 = 12 E.P. 1 = 20 Pat. L.T. 638 = A.I.R. 1939 Pat. 531.

—Decree—Suit to restrain decree is void and incapable of collusion—Court fee—

Valuation.

In a suit for permanent injunction restraining a decree holder from executing his decree on the ground that the same was obtained by fraud and collusion and was therefore void and incapable of execution, the plaintiff must be required to value his suit according to the amount of the decree which he seeks to avoid, and to

James and CHANDRA } E. 730 = Pat. 572.

Scope—Suit to declare that decree for setting aside execution sale of possession—Valuation—Principles

praying for a declaration that against a member of the plaintiffs' family was obtained by fraud, and for the consequential relief, that the sale held in execution of the decree may be set aside and the plaintiffs' possession confirmed, the suit has to be regarded as a suit for possession, for purposes of classification under S. 7 (iv) (c) of the Court-Fees Act there is no distinction between a suit for confirmation of possession and one for reco-

mise decree in partition suit was obtained by fraud and for partition—Valuation of relief.

In a suit for a declaration that a compromise decree was obtained by fraud, and for partition—Valuation of relief.

—S. 7 (iv) (c)—Cancellation of deed of family settlement—Suit by Hindu widow for—Allegation of fraud and misrepresentation—Recital in deed that husband was joint with brother and that widow was given properties in lieu of maintenance—Plaint alleging that husband was separate and claiming right of inheritance to estate—Court fee payable

entitled to maintenance in lieu of which she was given properties worth Rs. 20,000. She originally paid a court-fee of Rs. 15 as on a declaratory suit, but

COURT FEES ACT (1870), S 7

made under S 9 of the Suits Valuation Act it is impossible to say that the plaintiff's valuation of the value of the property is incorrect (*Henderson and A. J. Trading and Investment L.*)
70 C L J 151

COURT FEES ACT (1870) S 8

made on 2—11—1929 and duly registered. The property of the plaintiff is situated in the village of ...

—S 7 (iv) (c)—*Suit for auction sale and for injunction—Plaint of property—Valuation of suit*

P brought a suit for setting aside a certificate case. The property had a worth at least Rs 12,000 in another *partes*, but it had been purchased by holder for one price. P however was in the suit he prayed that the sale might be set aside and that an injunction should issue restraining the auction purchaser from taking possession on the basis of the said auction sale. P framed the suit under S 7 Cl (iv) of the Court Fees Act and put the valuation at which it had been purchased viz one price as court fee thereon.

Held that as no objective standard of valuation was available in so far as P's claim was concerned he was entitled to put his own valuation. (*S. A. Ghose and Lodge J.*) *BAGALA NANDA DUTTA v SHRISH CHANDRA NANDY* 184 I C 106 = 14 R C 203 = A I R 1939 Cal 278

—(as amended by the Madras Act V of 1922) S 7 (v) and Sch II Art 17 B—*Applicability—Decree holder purchaser getting symbolical delivery—Suit for possession and mesne profits against person in actual possession—Court fee payable*

The appellant who obtained a mortgage decree in respect of the western portion of a house brought the

from him therefore had to be valued under S 7 (v) of the Court Fees Act. For the purposes of court fee what is the plaintiff who must be the nature of the suit as the claim plaintiff (*Itadsworth and or J.*) *SURVANARAYANA CHARYULU v NARASIMHASWAMY* 49 L W 196 = I L R (1939) Mad 367 = 180 I C 640 = 11 R M 736 = 1939 M W N 152 = A I R 1939 Mad 360 = (1939) 1 M L J 268 (F B)

—(as amended in Madras) S 7 (v) and Sch II, Art 17 B—*Applicability—Suit for possession of office of member and manager of school committee—Court fee—Valuation—Jurisdiction—Value of properties over Rs 3000—Maintainability in Munsif's Court*

The plaintiff who claimed to have been appointed member and manager of a school committee in the place of the first defendant who was removed brought a suit praying that the latter should be declared to have been validly removed from the office of member and

Court II under 7 (v) of the Act (ii) that where the properties are worth more than Rs 3000 the suit was maintainable in a Munsif's Court but only in Subordinate Judge's Court (*Somayya J.*) *KARUPPANA NADAR v KARUPPA NADAR* 50 L W 154 = 1939 M W N 720 = A I R 1939 Mad 776 = (1939) 2 M L J 226

—(as amended in Madras) S 7 (v)—*Applicability—Suit under S 13 Madras Survey and Boundaries Act—Prayer for possession—Court fee payable* See (AS AMENDED IN MADRAS) S 7 1939 M W N 841

Suit for specific performance with of the properties comprised in the—Apportionment of consideration performance is asked for in respect of several plots comprised in a contract, the fee the consideration should be various items of property

RAJ v RAM JEEWAN 1939 A M L J 80

—(as amended in Madras) Art 17 (iv)—*Appeal against order of tribunal constituted under U. P. Town Im-*

value of the house the suit being in truth and in fact a suit for possession against a person in wrongful possession of the property (*Leitch C. J. and Somayya J.*)

properties to the 1st respondent for 20 years the period to commence from 2nd June, 1935. The lease was execut-

COURT FEES ACT (1870), S. 8-C.

Provision Act—Court fee payable—Provision of the Act applicable.

The court-fee payable in respect of a memorandum of appeal against an award by a tribunal constituted under the U. P. Town Improvement Act, is under S. 8 of the Court Fees Act which applies to the case, on the difference between the claimed and awarded amount. The appeal will not come under Sch. II, Art. 17 (iv) of the Act. (*Bennet, J.*) *DEBI DIN v. SECRETARY OF STATE*. I L R. (1939) All 142 = 180 I.C. 73 = 11 E.A. 417 = 1938 A.L.J. 1124 = 1938 A.W.R. (H.C.) 843 = A.I.R. 1939 All 127

—Ss 8 C and 7 (iv) (c)—*Enquiry regarding valuation—Duty of Court—Suit for number of declarations and injunction—Proper valuation.*

suppose that the relief sought has been under-valued. But where having regard to the nature of the prayers in the plaint, it would be extremely difficult, if not impossible to estimate the precise value of the relief sought by the plaintiff, such an enquiry by the Court would be unnecessary. The plaintiff instituted a suit for a number of declarations and an injunction against the defendant, the main purpose of which was to ensure that a certain adjustment should be maintained under which the plaintiff had agreed to pay the defendant a certain sum provided the defendant agreed not to execute certain decrees which he had obtained against the plaintiff and not to take possession of some properties which the defendant had purchased at certain execution sales. It

COURT FEES ACT (1870), Sch. I, Art. 1.

preliminary decree in administration suits and they cannot obtain relief under the decree without payment of the proper court-fee. (*Baguley and Mosty, J.J.*) U

—*Power to require payment of additional court fee—Power of trial Court and of High Court in revision.*

Once the decree in a suit has been signed and sealed, the judge making that decree becomes *functus officio* and cannot thereafter make an order for payment of deficit court fee, but if the matter comes to the High Court in revision the High Court has power, if it considers that the question as to court fees has been of such additional I.C. and Tyabji, J.) MAL DWARKADAS, R. 1939 Sind 279. If exhaustive—In-

herent powers of Court to refund court fee

The Court has got inherent power to refund court-fee apart from Ss 13, 14 and 15 of the Court Fees Act. (*Venkataramana Rao, J.*) *VISHNU NAMBUDDI v. RAMUNNI MARAR*. 1939 M.W.N. 1143 = (1939) 2 M.L.J. 867.

—S 17—*Applicability—Claim for alternative reliefs*

Where reliefs claimed are alternative S 17 of the Court Fees Act does not apply and the court-fee is payable on the relief which bears the highest valuation. (*D.R. Norman*) *PUKH RAJ v. RAM JEWAN*. 1939 A.M.L.J. 80.

—S 17—*Several declarations arising out of a*

is... Held, (s) that the valuation was as accurate as could be expected in the circumstances of the case and it need not be at the sum payable to the defendant under the

JEEWAN. 1939 A.M.L.J. 80

—Sch and Ss 4, 6 and 7—*Scope—Imposition of liability*

be... Hi... rel... every year in a Courtyard attached to the palace of the Hindu. If the plaintiff succeeds in his suit the value of

(*Dunlop, J.*) *MARIAM BIBI v. MALIM*. 1939 Rang L.R. 474 = 184 I.C. 171 = 12 E.R. 129 = A.I.R. 1939 Rang. 375.

I, Art 1—*Appeal against rejection of plaint under O 7, R 11, C.P. Code—Court-fee payable.*

Where a plaint is rejected under O 7, R 11, C.P. Code...

this point of view it is not correct to hold that there is no objective standard by which the requisite valuation could be made. (*Edgley, J.*) *SOURISH CHANDRA RAY v. SHAIKH GOPAL OSTAGAR*.

I L R. (1939) 2 Cal 20 = A.I.R. 1939 Cal 743 —S 11—*Administration suit—Preliminary decree—Payment of court fees by defendants—Practice.*

It is the practice in the mofussil to demand payment of court fees from defendants, who come in under a

amount demanded by the Court and that paid by the plaintiff, ought to be paid on the memorandum of appeal. (*Ross, J.*) *MT MULI BAL v. GOPALDAS*.

1939 N.L.J. 32 —(as amended in Bombay), Sch I Art. 1 and Sch II Art 11—*Applicability—Appeal from order under O. 21, R 50 (2) and (3)—Court-fee.*

The words "or otherwise" in O 21, R 50 (3) wide enough to include court fee payable. There

COURT FEES ACT (1870) Sch I Art 1

execution of a decree against the firm. Hence an appeal from such order falls under Art 1 of Sch I Court Fees Act and not under Cl 5 of Bombay Government Notification No 590 issued under S 35, Court Fees Act and is chargeable with *ad valorem* court fee and not the fee chargeable under Art 11 of Sch II Court Fees Act (*Davis J C Lobo and Western J J*) SEOMAL KHEM CHAND v LAHNIBAI

I L R (1939) Kar 589 =
182 I O 470 - 12 R S 13 =
A I R 1939 Sind 161 F B)

—Sch I, Art 1—Redemption suit—Appeal—Court fees

In respect of a memorandum of appeal in redemption when the subject matter in dispute is not about the existence or non-existence to redeem but relates only to the amount due paid by the mortgagor as condition precedent to redemption decree in his favour the subject matter is

able set off—Tentative valuation—Permissibility

The word set off in Sch I, Art 1 not having been qualified in any way must include not only a legal set off but also an equitable set off. Tentative valuation of a claim is permissible only in suits for a profits. Defendant who in a suit for cross claim for damages suffered by him the acts and conduct of the plaintiff off against the plaintiff's claim must as accurately as he can and pay *ad valorem* court fee thereon and cannot be allowed for the claim (*De J*) A Z M REAZAI OSTAGAR

43 C W I

—Sch I Art 1—Subject matter in dispute—Meaning of—Cross objection

The words the subject matter in dispute of Sch I of the Court Fees Act mean, in cross objection the subject matter in dispute. If therefore in an admission of the respondents who have been ordered to pay the appellants a certain sum as special costs in any event (the ordinary costs being ordered to abide the passing of the final decree) file a cross objection relating to the findings in the suit and also to the special costs then the cross objection relates to the special costs *ad valorem* on the amount. MARIAM BIBI v MALIM 184 I O 171 - 12 R S

—Sch I Art 1—Suit to enforce mortgage—Appeal by defendant—Court fees payable

In an appeal by the defendant in a mortgage suit the value of the property is not enough for the appellant to value the figure at which the plaintiff values the property. He ought to value it at the interest *pendente lite* (*Dhavia a*) RAM SAWARI KUER v MOTIRAJ KUER

17 Pat 687 = 178 I O 150 = 5 B R 59 =
111 P P 220 = 19 Pat LT 885 = 1939 P W N 162 =
A I R 1939 Pat 83

—Sch I Art 1—Valuation—Suit under O 21 R 63 C P Code bearing court fee of Rs 15—Demand of *ad valorem* court fee on value of property—

COURT FEES ACT (1870) Sch II, Art 11

ance—Rejection of plaint—Appeal—Valuation of court fee payable. See COURT FEES ACT SCH II, Art 11 5 B R 620

I Art 12—Applicability—Succession certificate in respect of Provident Fund—Liability of nominee of Provident Fund to court fee. See PROVIDENT FUNDS ACT, S 5 (2) A I R 1939 Sind 52.

—Sch II, Art 1 (d)—Same judgment governing several suits—Appeals filed in some to High Court and in others in District Court—Application for transfer of all appeals to High Court for analogous trial—Separate application and vakalatnama for each appeal—If necessary

15 suits filed by a person were tried analogously and dismissed by the same judgment. Owing to the difference

the application must be considered not as an application for transfer but as one application for appeals pending in the High Court and for the transfer of one appeal to the District Court and consequently one application stamped with a court fee stamp of Rs 2 is necessary and not thirteen applications each stamped with a court fee stamp of Rs 2

Held also that the vakalatnama filed in the appeals was not necessary. *Govind v. Vaka* *ndkar* *Pal* 836

—(as amended in Madras) Sch II Art 11—R 12—Application for Rejection—If decree

under O 20 A 12, into future profits which has been left open in the decree in the suit and for an order directing the defendant to pay the amount

under Sch II Art 11 of the Court Fees Act as amended in Madras and a court fee of one rupee is sufficient. The appellant cannot be ordered to estimate the amount at which he values his relief and to pay an *ad valorem* court fee on the figure stated by him (*Shan J*) PULLA REDDI v VENKATA

1939 M W N 485 = 49 L W 652 =

I R 1939 Mad 667 = (1939) 2 M L J 356

II Art 11—Applicability—Dismissal of order under S 9 (2) and (2) of U P Encumbered Estates Act at time barred—Order declaring that debts to be deemed to be discharged—Appeal—Court

and an appeal is preferred against it the court fee payable is not *ad valorem*, but under Art 11 Sch II of the Court Fees Act. *Shan J* *Pal* *836*

CR. P. CODE (1898) S. 35.

consolidate them; likewise it can reduce the same if it thinks the same excessive. (*Noor and Varma, J*)
 IDRIS v EMPEROR 183 I C 217=5 B R 907=
 29 Pat L T 736=12 R P 121=40 Cr L J 751=
 1939 P W N 35=A I R 1939 Pat 349

—S 35—Separate sentences on conviction for sentences are

the accused passes two separate sentences of imprisonment but does not specify that the two sentences are to run consecutively it must be held that they have been ordered to run consecutively under S 35, Cr P Code (*Noor and Varma, J*)
 IDRIS v EMPEROR 183 I C 217=
 5 B R 907=20 Pat L T 736=12 R P 121=
 40 Cr L J 751=1939 P W N 35=
 A I R 1939 Pat 349

—S 54 (1) para 7—Jurisdiction of Police to arrest—Warrant is used by Magistrate of Native State—Sufficiency See INDIAN (FOREIGN JURISDICTION) ORDER IN COU' CIL 1902 1938 P W N 869

—S 56—Police constable deputed by station house officer to arrest—Authority in writing—Necessity

Where a police constable to whom no complaint had been made and who had not received any credible

authority to arrest (C... ..)
 EMPEROR I L R
 12 R N 101=40

—S 64—Construction—Offence, if includes offence under S 171 D—I P Code

The word offence in S 64, Criminal Procedure Code, is wide enough to include an offence under S 171 D, Indian Penal Code (*Mulla J*)
 BRAHMANAND MISRA v EMPEROR 184 I C 662=
 1939 A W R (H C) 696=1939 A Cr C. 164=
 1939 A L J. 779=A I R 1939 All 682

—Ss 76 and 90—Warrant, issue of—Discretion—Endorsement under S. 76,
 CODE, SS 353 AND 225

—S 83—Applicability—in cases of conviction

outside his jurisdiction The fact that the Native State in question has adopted the Cr P. Code does not give

person other than absconder—Legality.
 An order of attachment passed under Ss 87 and 88, Cr. P. Code, against a person other than the absconder is

CR. P. CODE (1898), S. 106.

without jurisdiction (*Abdul Qayoom, C.J. and Wazir J*)
 MUNSHI v STATE 41 P L R J & K 60.

—S 88 (6 D)—Suit without filing claim—If barred.

S 88 (6 D), Cr. P. Code, does not prevent a person from filing a suit to establish his title to attached property without first filing a claim or objection under sub S (6-A) (*Panckridge, J*)
 REMMAH EZEKIEL v PROVINCE OF BENGAL. I L R (1939) 2 Cal 52=
 A I R 1939 Cal 746.

—S 94 (3)—Scope—Documents protected by Evidence Act, S 126—If exempted from production—Objection to production—When to be decided—Procedure.

Cl (3) of S 94 Cr. P Code, does not exempt documents protected by S 126 of the Evidence Act and the production of such documents is incumbent under S 162 of the Evidence Act notwithstanding any objection which there may be to the production or admissibility The validity of the objection has to be decided by the Court after production, the application for issue of summons for their production ought not to be dismissed on that ground (*Lakshmana Rao J*)
 PUBLIC PROSECUTOR MADRAS v M S MENOKI
 50 L W. 428=1939 M W N 1127=
 (1939) 2 M L J 634

—S 106—Order under conviction under S. 452,

ons regulating one sides of the But when once the evidence has been believed, it is y that the evidence was er. There is nothing in the law which makes such evidence inadmissible. (*Birtley and Henderson J.J.*)
 BANA MALI BHATTIA CHARJYA v EMPEROR I L R (1939) 1 Cal 210.

—S 106—Applicability—Conviction under Ss 147, 324, 325 and 342 read with S. 149—Separate sentence—Legality.

S 106, Cr. P. Code, is not inapplicable to the case of a conviction under Ss 147, 324, 325 and 342 read S 147, I. P Code But the award of separate sentences set aside (*Laksh-*
 41 B In re
 1)=50 L W. 918=
 1939 Mad. 787=
 (1939) 2 M L J. 36 (1)

106—Order under conviction under S. 452,

40 Cr L J 721=A I R 1939 Cal 320.

—S 106—Order under conviction under S 447,

peace in S. 106, peace should be before the sec- that a breach ere the accused ough there is hen there is no an order under passed (*Yorke,*
 J) BANS GOPAL v. EMPEROR. 14 Luck 360=
 179 I C 269=11 R O 156=40 Cr L J. 183=
 1939 A W R (O C) 11=1938 O.W.N. 1361=

CR. P. CODE (1898), S. 106.

1939 O L R. 19=1939 A Cr C. 14=
1939 O A 103=A I R 1939 Oudh 45

—S 106—*“Other offences involving a breach of the peace”*—Interpretation.

ANKU LAL v. SADHAN CHANDRA.

I L R. (1939) 2 Cal 261=69 C L J 565=
12 R C 177=183 I C 672=40 Cr L J 836=
43 C W N 867=A I R 1939 Cal. 484

—S. 106—*Scope—Conviction under S 426, I P Code—Order under S. 106, Cr. P. Code—Sustainability*

The offence under S. 426, I. P. Code, does not involve a breach of the peace and an order under S. 106, Cr. P. Code, cannot therefore be passed on a conviction under S 426, I. P. Code. (*Lakshmana Rao, J*)
SUBBA RAO *In re*, 50 L W. 511 (1)=
1939 M W N. 1012=(1939) 2 M L J 750

—S. 107—*Action against leader for apprehended acts of his community—Propriety.*

A person cannot be hauled up under S. 107, Cr P Code, merely because he holds a respectable position in the community to which he belongs and wields an enormous influence with its members, when there is nothing to show that he himself is likely to commit a breach of

CR. P CODE (1898), S. 112.

tion or the a quiescing in the collection of women for the purpose of religious instruction, discourse or songs, the meeting together of men and women for a joint satsang

—S 107—*Proceedings under—Nature of.*

Proceedings under S. 107 are proceedings for the preservation of peace and not for the preservation of morals. (*Davis, J C.*) OM RADHE v. EMPEROR

183 I C. 460=40 Cr L J. 803=12 R S. 55=
A I R. 1939 Sind 238.

—S. 107 (1)—*Construction—Notice under—Contents of—“Substance” of information*

There must of course be something more than the past misconduct of a person proceeded against under S 107, Cr P. Code, to justify a notice being served upon him, but there is no provision in the Code which requires the information to show the particular act which is in contemplation at the time The Magistrate must be satisfied that there is a likelihood of a breach of the peace. What will satisfy him must depend on the particular facts of the case Where a notice states that the person proceeded against is a leader of one of the

whom he has no control, and for whose conduct he can

Saitis, JJ) MUTHUSWAMI CHETTIAR, *In re*
50 L W 802=1939 M W N. 1209 (F B).

—Ss 110 and 145—*Applicability—Substance of information relating to disputes about land—Procedure.*

Where the substance of information received under S 110 as set out under S 112 relates to disputes relating

12 R S 94=A I R 1939 Sind 261.

—S 107—*Action under—When not justified*

A person who is doing a lawful act cannot be called upon to execute a bond under S. 107, Cr. P. Code, merely because some other person has committed a breach of the peace and other citizens. Further, acts in respect of which the repetition of which may be required must not be apprehended from the

may result in a breach of the peace because of the wrongful or unlawful acts of others S 107 is intended to be applied against the wrong doers and not also against the wronged. It was never the intention of the section that the wrong doers and the wronged should be classed together as wrong doers and made the subjects of a common complaint and common action. The collec-

A I R 1939 Lah 267.

—S. 112—*Order under—Scope—If can extend information given under S. 107.*

It is doubtful how far an order under S. 112, Cr. P. Code can properly exceed the information given under S. 107. (*Davis, J. C. and Weston J.*) JASODA LAKH-
RAJ v. EMPEROR. I L R (1939) Kar 662

CE P CODE (1898), S 133

182 IC 698=12 RL S 51=40 Cr LJ 703=
AIR 1939 Lab 276

—S 133—Applicability—Long station

S 133 is not intended for the removal of obstructions but for unlawful obstruction on public places. Where a road has been constructed and there is obstruction to the ches of trees alongside the obstruction can be held to be a recent one, even though the trees in dispute have been in existence for a number of years. If however the road was constructed several years ago then it cannot be said that the trees that have stood alongside this road for a number of years constitute a new obstruction. (*Abdul Rashid f*) CONSOLIDATION CO OPERATIVE SOCIETY v HARGOBIND

183 IC 292=12 RL 108=40 Cr LJ 758=
AIR 1939 Lab 276

—S 133—Jurisdiction of Magistrate under Carrying on business by butchers in a locality—Order prohibiting—If justified

particular locality and is found to be a nuisance a de, to of the dered n the public An ss of

slaughtering animals and selling beef and meat in their respective houses was upheld on the ground that there was bad smell causing a complete nuisance to the inmates of a school and the public in the neighbourhood. (*Manohar Lal and Chatterji f*) MAKSOOD ALI v PRESIDENT UNION BOARD 17 Pat 669=180 IC 852 5 BR 505=12 RP 549(2)=40 Cr LJ 516=1939 PWN 95=20 Pat LT 288—AIR 1939 Pat 183

—S 133—Old encroachment—Proceeding if justified

If an encroachment is held by the Magistrate to be a recent one proceedings under Chapter X Cr P Code would be perfectly valid. If however it is discovered that the obstruction is an old one such proceedings would not be justified. (*Abdul Rashid f*) NANUMAL v EMPEROR 184 IC 352=12 RL 211=40 Cr LJ 933=41 PLR 515=

ers under S 133
CO OPERATIVE
183 IC 292=
10 Cr LJ 758=
AIR 1939 Lab 276

—Ss. 133 and 139 A—Proceedings under S 133—Production of evidence to show title to disputed land—Duty of Magistrate

Where in proceedings under S 133 Cr P Code the party concerned produces documentary evidence to prove title to the land in dispute and it could not be said that their contention is frivolous it is obviously a matter which can only properly be decided by a competent Civil Court and hence the proceedings ought to be stayed under S 139 A. (*Alltop f*) KUNDAN LAL v EM

CE P CODE (1898), S 137

PEROR

180 IC 495=11 RA 465=

Code has to be adopted and it includes any class of the public or any community. A right claimed by a certain number of cultivators in a village, numbering about 60 to use the water of a reservoir flowing through a channel for irrigating their lands cannot be said to be a public right. It is clearly a private right vested only in a selected number of persons. (*Noor and Varma, f*) HARNANDAN LAL v RAMPALAK MAHTO

18 Pat 76=1939 PWN 346=184 IC 47=
12 RP 212=6 BR 6=40 Cr LJ 837=
20 Pat LT 748—AIR 1939 Pat 460

—S 133—Public right—Test of

Noor f—The best criterion of a public right is to see whether the right claimed is vested in such a large number of persons as to make them uncertain and to make them a community or class.

Varma f—A public right does not depend upon the number of individuals who enjoy it. It is, generally speaking, that which must be enjoyed by members of the general undetermined mass of the public. (*Noor and Varma f*) HARNANDAN LAL v RAMPALAK MAHTO

18 Pat 76=1939 PWN 346=
184 IC 47=12 RP 212=6 BR 6=
40 Cr LJ 837=20 Pat LT 748=
AIR 1939 Pat 460

—S 133—Resort to proceedings and r—When justified—Nature of proceedings under Chapter X

Where certain mills have been working under a licence from the Municipality, for a number of years it would not be proper to have recourse to the provisions of Chapter X of the Cr P Code. The proceedings under Chapter X are of a summary nature and intended to enable Magistrates to deal with cases of emergency and not intended to enable a complaint to obtain, by having recourse to this chapter, relief which he should seek in the Civil Court. (*Radha Krishna f*) KEDAR NATH v SATISH CHANDRA

184 IC 754=1939 AWR (CJ) 252=
1939 OLR 653=1939 OWN 866

—S 135—Burden of proof—Party against whom conditional order is passed—Duty of in showing cause

It is not correct to hold that the person against whom made has the burden of r P Code. He has only matters complained of) EMPEROR v RAMESH IC 511=11 RB 301=40 Cr LJ 444=41 Bom LR 84—AIR 1939 Bom 82

—(as amended in 1923) Ss 137 and 139 A—Applicability—Place of burial Allegation of public place—Order under S 133—Opposite party pleading private possession of place—Proper procedure—Order absolute—Legality—Jurisdiction to pass

A Sub Divisional Magistrate passed a preliminary order under S 133 Cr P Code relating to the burial at a certain place which was alleged by the first party to be a public place. The second party appeared before the Magistrate and contended that the place in question was in their private possession and that the burial did not cause annoyance to any one. The Magistrate there upon took evidence on both sides and on consideration

CR. P. CODE (1898), S. 137.

of the evidence passed an order under S. 137, Cr. P. Code, making absolute the order passed by him under S. 133.

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GOVINDA GOUNDAN v. AYI GOUNDAN
I L.R. (1939) Mad 1030 =
183 I C 567 = 12 B M 316 = 40 Cr.L.J. 813 =
49 L.W. 476 = 1939 M.W.N. 409 =
A I R. 1939 Mad. 465 = (1939) 1 M L J. 649.

S. 137—Duty of Court—Final order—Condition precedent to making of—Evidence—Burden of proof—Result of local inspection—Ex parte statements forming basis of committal order—Relevancy.
Any information or *ex parte* statements on which a conditional order was passed under S. 133, Cr. P. Code, are not relevant in considering whether the final order under S. 137 is a legal and proper one. The Court is only concerned with the evidence which was given at the inquiry. Nor can a final order be legally based on the result of a local inspection by the Magistrate. The Magistrate under S. 137 has to take evidence as in summons case; the complainant has to make out a *prima facie* case; in other words he must produce before the Court legal evidence which would justify a finding that what is complained of amounts to a public nuisance (*Broomfield and Macklin, J.*) **EMPEROR v. RAMESH WAR NARAYAN** 180 I C 511 = 11 R L J. 301 = 40 Cr L J. 444 = 4 A I R.

S. 139—Duty of Magistrate of proceedings—When justified—Re What is.
The law requires that the mere existence of reliable evidence in support of the denial of a public right is sufficient to justify the Magistrate in making a conditional order under S. 137, Cr. P. Code. (*Noorant Varma, J.*) **HARNANDAN LAL v. RAMPALAK MAHTO**. 18 Pat 76 = 1939 P W N 316 = 184 I C 47 = 12 R P 212 = 6 B R 6 = 40 Cr.L.J. 837 = 20 Pat L T 748 = A I R 1939 Pat 460

S. 139-A—Duty of Magistrate
It is the duty of the Magistrate to ask the person against whom an order is made under S. 133, Cr. P. Code, whether he possesses any reliable evidence in support of the denial of the person against whom the notice has

CR. P. CODE (1898), S. 144.

been issued, or whether the denial is only frivolous. Where the Magistrate finds that there is reliable evidence in support of the denial, he shall stay the proceedings.

by a competent Civil Court which right, and in cases where he shall proceed according to

S. 137 or S. 133 as the case may require (*Baipai, J.*)
CHHEDI LAL v. EMPEROR 170 I C 970 = 11 R A 399 = 40 Cr L J 286 = 1938 A L J. 1145 = 1938 A.W.R. (H C) 841 = A.I.R. 1939 All 116.

S. 141—Discretion and duty of Magistrate—Order—Form and substance of—Jury failing to function—Procedure—Fresh opportunity to persons proceeded against—If to be given

Under S. 141, Cr. P. Code, the Magistrate has a discretion as to the order he should pass, and that discretion means a judicial discretion. The Magistrate cannot under the section pass an arbitrary or capricious or whimsical order. The order must be a reasoned order, such an order as the Court in appeal can uphold. If it is to be a reasoned order, it must be based upon information upon which the Magistrate can rely, and such information, of course, can only come to the Magistrate from materials before him on the record or as the result of any personal inquiry he may have made by visiting the spot. But it cannot be invariably laid down that once the jury have failed to function, the Magistrate is compelled to conduct some inquiry before he can pass an order under S. 141. But if the tribunal chosen by

necessary that he should hold a formal inquiry in which they have the opportunity of cross-examining the witnesses at length. (*Oates, J. C. and Lobo, J.*)
ETHANAND v. SHIKARPUR MUNICIPALITY
I L R (1939) Kar. 179.

S. 144—Applicability and scope—Order in the nature of permanent injunction prohibiting the holding of hat on private land—Legality of—Proper course.

A Magistrate, as an emergency measure, has power to stop, by an order under S. 144, Cr. P. Code, the holding of a hat, or the exercise of his rights by a man on his own land. A man who holds a hat on his own land is perfectly entitled to do so, and that by itself is not a wrongful act, for competition in trade unless illegal methods are adopted, is not a wrongful act. When a rival business is started in close proximity to a previously established business, the person interested in the

wrongful act or if necessary, to bind down the wrongdoer by an order more or less under S. 144, Cr. P. Code, is entitled to a speedy remedy. An permanent injunction under S. 144, Cr. P. Code, is not a permanent injunction under S. 144, Cr. P. Code.
EMPEROR
1939 P W N. 616

S. 144—Duty of Magistrate—Definite statements of acts prohibited—Necessity for—Delegation by Magistrate of discretion to Public Relations Officer—Order directing party to abstain from acts which the Public Relations Officer does not approve of—Legality.

CR P CODE (1898), S 144.

An order under S 144, in which the Magistrate delegates to the Public Relations Officer a discretion which he ought himself to exercise is definitely illegal

approve of is not order which complies with the section. It is for the Magistrate himself and not for the third party to say what is the character of act which is hidden (*Beasmont C J and Sen, J*) AIRLISHIR HIROZSHAW MUKZBAN, *In re* 41 Bom LR 1253

—S 144—Duty of Magistrate under

There is nothing in S 144 requiring the Magistrate to uphold rights whether constitutional or otherwise and there is nothing in the section requiring the Magistrate to hold a judicial inquiry into the rights of the parties involved. Once a Magistrate is of opinion that there is sufficient ground for proceeding under S 144 once a Magistrate considers that there is "apprehended danger" which can only be averted by directing a person or persons to abstain from a certain act which may result

deliberate upon and decide the rights of the parties before acting (*Lobo and Tsyabji JJ*) PIR GUL HASAN SAHIB v EMPEROR

ILR (1939) Kar 751—183 IC 641—12 RS 67—40 Cr LJ 823—AIR 1939 Sind 230

—S 144—Order under—Contents

A Magistrate must satisfy himself that there is sufficient ground for proceeding under S 144 and when so satisfied he must set out material facts of the case in his order the reason being that the public should know why their rights are to be suspended so is fatal to the validity of the order has been drawn up on the Sch 5 Cr P Code it cannot be a valid order. The order should be precise terms what is it that the public are prohibited

AIR 1939 Rang 181

—S 144—Order under—Contents of—Reasons for action against person proceed against—Necessity to specify

An order under S 144, Cr P Code, must state the material facts of the case. The Magistrate must give reasons why he has decided to proceed in a particular

OR P CODE (1898), S. 144

Magistrates is an extraordinary power which enables them to suspend the lawful rights of the public if they think it to be in the interests of public peace and safety

that every citizen either in the and this right ed in a lawful over to issue

an order under S 144 on a pretended apprehension of danger of the breach of public peace (*Ba U, J*) THAKIN AUNG BALA v DISTRICT MAGISTRATE, RANGOON 1939 Rang LE 294—182 IC 23—11 RR 516—40 Cr LJ 645—AIR 1939 Rang 181

—S 144—Powers of Magistrate under—Mandatory order—Competency of Magistrate to pass—Bund erected on land of another by person not in possession and having no right whatever—Order directing party in possession to remove bund—Legality—Objection by party erecting bund—Sustainability

S 144, Cr P Code empowers a Magistrate not only to direct a person to abstain from a certain act but also to direct a person to take certain order with property in his possession or under his management, if

considered that such direction is likely to prevent, among other things, a public tranquility. A Magistrate is

any order, in possession. Where a which he do so as to a pyne

the Magistrate has got power under S 144 to direct the party in whose possession the land is to cut the bund, and it is not for the party who erected the bund unlawfully to attack the order on the ground that it is illegal (*Agarwala J*) LACHMI NARAYAN SINGH v NANDKISHORE SINGH 184 IC 723—6 ER 79—20 Pat LT 850.

—S 144—Power of Magistrate under—Restriction of liberty of the press—Limits to

A Magistrate acting under S 144 Cr P Code, may no doubt restrict the liberty of the press. But he must make such restriction necessary and he should not and the require and (*Sen J*)

41 Bom LR 1253.

—S 144—Scope—Order against party wronged—Justified

Even in the case of an order in an emergency under S 144 the Magistrate's action should be directed rather against the wrong doers than the wronged though the nature of the emergency may make it necessary for a time in the public interest, to interfere with the lawful exercise of private rights (*Davis J C and Weston J*) JASODA LEKHRAJ v EMPEROR

ILR (1939) Kar 682—182 IC 698—12 RS 31—40 Cr LJ 703—AIR 1939 Sind 167.

Successive orders under—Prostrate

issued under the pretext of main passing successive orders under the ground that a similar order the same party on a previous is involves a definite abuse of is entirely unwarranted. It is at by passing repeated orders void the decision of a dispute

CR. P. CODE (1898), S. 144.

which may be appropriately dealt with under S 145 or S. 107, Cr. P. Code. The power given under S. 144 is essentially an emergent power which has sometimes

Criminal Court has not done anything to look into the rights of the parties, and further, to indirectly prolong the effect of the original order beyond the period of two months fixed in S 144 (6) (*Dhazle, J*) F.E. CHRESTIEN v. CARTER, 184 I C 240 = 1939 P.W.N. 402 = 6 B.R. 30 = 12 R.P. 232 = 40 Cr L.J. 895 = 20 Pat L.T. 374 = A.I.R. 1939 Pat 512

—S. 144 (1), (2) and (3)—Scope of—Power to issue order to general public—Limits of.

The first two clauses of S 144, Cr. P. Code, are confined to the case of an individual person or persons to whom a notice may be issued directing them to refrain from a certain act or to take certain order with certain property in their possession or management. They do not invest the Magistrate with any power to issue an order to the general public. Sub Cl (3) makes pro-

power given to the Magistrate to issue an order to the

—S 144 (3)—Order prohibiting meeting within a certain area—Legality

—S 144 (5)—Application under—Summary disposal—Legality

Section 144 (5) is a mandatory provision. Where an application is filed for cancelling the order, the Magistrate should give the applicant an opportunity to support his application. He should not dismiss it summarily, (*Ba U, J*) THAKIN AUNG BALA v. DISTRICT MAGISTRATE RANGOON, 1939 Rang L.R. 294 = 11 B.R. 516 = 182 I C 23 = 40 Cr L.J. 645 = A.I.R. 1939 Rang 181

—S 145—Absence of complainant—Dismissal—If warranted

There is no provision in S 145, Cr. P. Code which would warrant the dismissal of a case merely the complainant failed to attend when there is a likelihood of breach of the peace (*Amer*) RAQUMA v. GHIRAI, 184 I C 102 = 1939 O.L.R. 651 = 1939 A.W.R. (C) 277 = 1939 O.W.N. 974

—S 145—Applicability—Claim to joint possession—Proceedings under S. 145—Property of

S 145, Cr. P. Code, is not inapplicable as between parties entitled to joint possession. A case in which one party claims exclusive possession while another party claims to be in joint possession along with that party is no less a question of disputed actual possession than if each party claimed exclusive possession of the entire area (*Rowland, J.*) ZAFAR AHSAN v. JOGESHWAR BUX, 1939 P.W.N. 855.

Y. D. 1939—26

CR. P. CODE (1898), S. 145.

—S 145—Applicability—Dispute as to possession of mineral—Proceedings under S. 145—Property of.

Proceedings under S. 145, Cr. P. Code, are not inapplicable to possession of minerals; they are appropriate possession of minerals, as to the possession of (*d Rowland, J*) KANCHI ATAP UDAINATH SAHI

DEO, 18 Pat 216 = 5 B.R. 711 = 182 I C 89 = 11 R.P. 657 = 40 Cr L.J. 631 = 1939 P.W.N. 72 = 20 Pat L.T. 105 = A.I.R. 1939 Pat 209.

—S. 145—Applicability—Dispute relating to land—Proceedings under S. 110—If justified—Proper course. See CR. P. CODE, SS. 110 AND 145.

A.I.R. 1939 Sind 261. —S 145—Attachment of property—Subsequent dropping of proceedings—Order for delivery to one of the parties if justified—Proper order.

Where the subject matter of dispute is attached but subsequently the proceedings are decided to be dropped as there was no likelihood of a danger to public peace, the Magistrate concerned has no power to pass an order at that stage directing the delivery of possession of the attached property to one of the parties. The proper order would be to direct the property to continue in the possession of the party to whom the title is decided by (*DALJIT SINGH v. TEJ*) 184 I C 290 =

1939 A.W.R. (C) 203 = 1939 O.A. 734 = 1939 O.L.R. 602 = 1939 O.W.N. 891 = 12 R.O. 97 = 1939 A.C. 178 = 40 Cr L.J. 930 = A.I.R. 1939 Oudh 284.

—S 145—Duty of Magistrate—Possession given by Civil Court—Duty of Criminal Court to respect—If conclusive as to present possession.

The Criminal Court ought to hold that if on a given date possession by the Civil Court was put in possession as where a considerable delivery of possession of the land is disputed, or be conclusive as to

present possession. In such a case it is open to the Magistrate to hold that there has been an ouster of the party who was put in possession by the Civil Court (*Rowland, J.*) ZAFAR AHSAN v. JOGESHWAR BUX, 1939 P.W.N. 855.

—S 145—Jurisdiction—Order dealing with lands not included in proceedings—Legality

In proceedings under S. 145, Cr. P. Code, a Magistrate should confine his order to the plots of land mentioned in the proceedings and the order should not include lands outside the proceedings. If he deals with a larger area of land in his order than what is included in the proceedings, he acts in excess of his jurisdiction and his order is void (*Varma, J.*) KIRPAL, 182 I C 51 = 5 B.R. 710 = 1939 Pat 565.

—S 145—Order declaring party in possession—Effect of—Defeated party trespassing and cultivating land surreptitiously and violently occasionally—Effect of—If disposition of party declared to be in possession

An order under S. 145, Cr. P. Code, confers, of course, no title but the fact of possession remains and the party in possession can only be evicted by a person who can prove a better title to possession himself. If after a party has been declared to be in possession by an order under S. 145 the opposite party has been able on some occasions either surreptitiously or forcibly to exercise acts of possession, such as cultivation of the

CR P CODE (1898), S 145.

land, these would be no more than isolated acts of trespass but not acts amounting to the dispossession of the other side and would not constitute the juridical possession of the trespasser unless other side refrains from asserting his possession for a sufficiently long time and gives up the protection of the order under S 145 in his favour. The possession of the party who succeeds in proceedings under S 145, Cr P Code, cannot be put an end to by the defeated party by mere violence or surreptitious invasion. It may be that the position of the parties to a proceeding under S 14 has changed since the passing of the order under the section. But the party prohibited from interfering with the possession of another party cannot be heard to say against that party that he has disobeyed the order and has thus been able to retain or obtain possession. To allow such a plea would be to defeat the object of S 145. When there has been no change in the position of the parties after the order the defeated party cannot be allowed to contend that he ignored the order of the Magistrate in favour of the other party and in spite of it continued in possession so long as the order passed is still in force (*Khasa Mohammad Noor and Dhaile J J*) AMBIKA THAKUR v EMPEROR 18 Pat 544 = 1939 P W N 747 = A I R 1939 Pat 611

—S 145—Order of Magistrate set aside in revision on technical grounds—His finding as to possession—Evidentiary value

Where an order of a Magistrate under S 145 Cr P Code has been set aside in revision, though on technical

J J DEBI SINGH v SIS KAM

41 F L R 120 = A I R 1939 Lah 188

—S 145—Parties—Dispute between tenants and co-sharer landlords—Failure to implead some landlords

—S 145—Procedure—Single proceeding in respect of different plots of land held by different tenants—Legality

There is nothing necessarily illegal or irregular in combining a large number of plots of land in one proceeding under S 145, Cr P Code where the dispute is between a landlord who claims a large number of plots on the one side and different sets of tenants claiming different plots of land on the other provided care is taken to ensure that the parties are not

—S 145—Scope—Title—Enquiry into—Jurisdiction—Unworked minerals—Necessity to

properly necessary in

CR P CODE (1898), S 145

order to ascertain who is in possession. In a case where the Magistrate has to decide who is in possession of certain unworked minerals, since unworked minerals are not capable of such possession as is the surface of land or a house, it is necessary for the Magistrate to consider who is the owner of the minerals in order to assist him in coming to a conclusion as to who is in possession of the same. Before a Court can come to a decision as to who is in possession of the unworked minerals the question of ownership has to be considered. In proceedings under S 145 Cr P Code it is no doubt possession that matters and not ownership but in the case of unworked minerals possession follows title, and the owner of the unworked minerals is in possession of them though he is not actually engaged in working them (*Harries, C J and Rowland, J*) RANCHI ZAMINDARI CO, LTD v PRATAP UDAINATH SAHI DFO 18 Pat 215 = 5 B R 711 = 182 I O 89 = 11 R P 657 = 40 Cr L J 631 = 1939 P W N 72 = 20 Pat L T 105 = A I R 1939 Pat 209

—Ss 145 and 146—Symbolical possession obtained under decree of Civil Court—Magistrate if can ignore

If in execution of a decree against the judgment debtor an order for delivery of possession of judgment debtor's property to the decree holder is made by the Court and effect is given to that order by an officer of Court executing the delivery warrant and since then the decree holder is in possession both in fact and law of the land in question but the judgment debtor within two months from the execution of such warrant attempts a

on the decree under S 145 decision of the It is immate

rial whether the possession is actual or merely symbolical and in the inquiry under S 145 there is only one conclusion possible for the Magistrate to arrive at with reference to the land and it is that it was in possession of the

—S 145—Third party—Right to intervene

Where the original contesting parties in respect of proceedings under Cr P Code S 145 had settled their disputes and the danger of a breach of the peace had disappeared, a person not a party to the original proceedings cannot seek to intervene and ask the Court to keep the proceedings pending with a view to enable him to adjudicate his rights and more so when there was no likelihood of a breach of the peace (*Grille J*) EV PEROR v CHUNILAL 1939 N L J 197

—S 145 (1)—Actual possession—Meaning of—Unworked minerals—Actual possession of—What amounts to—Minerals—Possession of—Acts of ownership—Trespasser working mine at certain points—Right

The words "actual possession" in S 145 (1) Cr P Code, mean actual physical possession but actual physical possession must vary with the subject matter. If the owner of unworked minerals under a definite area sinks a shaft and begins to work the minerals in that area, he can be properly said to be in actual physical

CR. P. CODE (1898), S. 145.

possession of the whole of the minerals in that area. In the same way if the owner of minerals under defined area grants to third parties mining leases of the minerals under portions of such area, he exercises acts of ownership over those minerals, and he can truly be said to be in possession of the whole of the minerals under that defined area. It cannot however be held that merely by work at three points on one end of a disputed hill possession has been taken of the whole of the minerals underlying the hill. The erection of a *Mandar* and the making of a road fall far short of what is necessary in order to take possession of the whole of the hill under the bill. Mining by a trespasser on two acres only does not amount to possession of the whole of the mineral field. A working minerals is only in possession of the minerals as he has actually mined and is not in possession of any of the unworked minerals (*Harris, C. J. and Rowland J.*) **RANCHI ZAMINDARI CO., LTD. v. PRATAP UDAINATH SAHI DEO.**

18 Pat 215 = 5 B.R. 711 = 182 I.C. 89 =
11 R.P. 657 = 40 Cr.L.J. 631 = 1939 P.W.N. 72 =
20 Pat L.T. 105 = A.I.R. 1939 Pat 209

—S 145 (1) and (2)—“Land or water”—Meaning of—Dispute as to collection of fees *khutagari*, *arhat* and *keali*—Proceedings under S 145—Competency—S. 147, applicability.

S. 145 Cr. P. Code, may not apply to a dispute arising out of the collection of certain fees called *khutagari*, *arhat* and *keali*, levied in respect of boats bringing grain and moored in shallow channel in a *tauzi* within a *mauza*, the fees being dissociated from the ownership of the site, are not included within the expression “land or water”, under S 145 (1) and (2), Cr. P. Code. But though S 145 may not apply, S 147 will and an order passed under S. 145 can be upheld under S. 147, Cr. P. Code (*Dhavit, J.*) **KUNJO V. SARIJU**

181 I.C. 176 = 11 R.P. 573 =
40 Cr.L.J. 538 = 5 B.R. 539 = 1939 P.W.N. 66 =
20 Pat L.T. 164 = A.I.R. 1939 Pat 206

—S. 145 (5)—Power to cancel preliminary order under S 145 (1)

A Magistrate has jurisdiction under S. 145 (5), Cr. P. Code, when circumstances justify it, to cancel a preliminary order issued previously under sub S (1) of

CR. P. CODE (1898) S, 147.

After a finding and a declaration of possession in favour of the petitioner under S 145 (6) of the Cr. P. Code, it is beyond the powers of the Sub Divisional Magistrate to direct the petitioner to restore two old cemeteries and allow access to Mussalmans if they should desire (*Lakshmana Rao, J.*) **BALAKRISHNA REDDIAR v. SYED JALALUDDIN SAHIB.**

184 I.C. 451 (1) = 12 R.M. 452 =
1939 M.W.N. 737 (1) = 60 L.W. 338 =

A.I.R. 1939 Mad 791 = (1939) 2 M.L.J. 111.

—S 145 (9)—Scope—Examination of several affidavits ignoring evidence—Order set aside in judgment on whole—Magistrate—Magistrate sees other than those originally summoned

In proceedings under S. 145, Cr. P. Code, arising out of a dispute over a plot of land, the Magistrate examined thirteen witnesses on one side and eleven on the other, but he ignored all this evidence and attached the land under S 146, Cr. P. Code, solely relying on the evidence of the Police Superintendent. This order was set aside by the High Court which directed the Magistrate to

Magistrate, however, declined to summon all the witnesses and summoned only those witnesses who had been examined by his predecessor in office, namely, thirteen, and then disposed of the case.

Held, that though under S. 145 (9) of the Cr. P. Code the Magistrate had power to summon all the proposed witnesses, he was not bound to summon any witnesses other than those originally produced by the parties, and there was therefore no illegality and irregularity calling for interference in revision. (*James, J.*) **BHUPAT V. ABDUL HAKIM**

5 B.R. 319 =
179 I.C. 896 = 1939 P.W.N. 155 = 11 R.P. 423 =
40 Cr.L.J. 276 = A.I.R. 1939 Pat 281.

—S. 146—“Competent Court”—Collector preparing rights during survey and settlement

if rights prepared by a Collector or other officer during survey and settlement operate orders of the Government is a decision of the Court within the meaning of S. 146, Cr. P. Code. The order of the Collector is a determination

passed on the land. A petition was filed under S 145, Cr. P. Code, on 12.5.1938. There was a preliminary order on 15.6.1938.

Held, that an order should be made under S 145 (6), Cr. P. Code, declaring the petitioner to be entitled to possession until evicted in due course of law the fact that the preliminary order was made on 15.6.1938 made no difference. (*Lakshmana Rao, J.*) **SASTRI V. SITARAMAYYA**

1939 P.W.N. 1

—S 145 (6)—Finding of possession—Petitioner—Direction to petitioner to restore and give access to Mussalmans—Power of Magistrate to order.

—S 146 (1)—Order under—When proper—Ample material to decide question of possession—Attachment, if justified

S 146 (1), Cr. P. Code, applies if the Magistrate is unable to satisfy himself as to which of the parties was in possession. Where there is ample evidence on the

—S 147—Applicability—Dispute as to collection of fees *khutagari*, *arhat* and *keali* levied on boats in

CR P CODE (1898) S. 147

channel—Order in respect of—Legality See Cr P Code s 145(1) AND (2) 1939 P W N 66

—S 147—General public—Right to use private property for Moharram ceremonies—Duty of Magistrate

Where the owners are in possession of certain property in which the general public have no interest at all and they object to the use of their property by the public for the performance of certain Moharram ceremonies they cannot be compelled to allow their property to be used in that way unless it is established that the persons claiming to use it have a right of user. A Magistrate should not enforce any use of this private property against the persons in possession thereof unless it is established either by a decree of a Civil Court or as the result of some enquiry under S 147 Cr P Code that the persons claiming the right to use it have justification for their claim. (*Allsop J*) **ABDUL MAJEED v EMPEROR** 180 IC 499=1939 A Cr C 70=

11 RA 470=40 Cr L J 383=1938 A W R (HC) 851=AIR 1939 All 182

—S 164—First information report—Use of—Safeguards to be taken—Relevancy—Value

As a general rule Magistrates and Judges should be quite clear when they make use of the first information reports that they are admissible in evidence admissible under ss 155 and 157 of the Code for the purposes mentioned therein. They may become relevant under other section of the Act and under certain circumstances substantive evidence in the case and Courts should be clear about their relevancy before they use them. (*Allsop J*) **RAM NARESH v EMPEROR**

ILR (1939) All 377=181 IC 646=1939 A Cr C 36=1939 A W R (HC) 190=40 Cr L J 559=11 RA 597=1939 A L J 107=AIR 1939 All 242

—S 162—Admission of evidence in contravention of—Effect on jury trial

The admission of evidence in a jury trial in contravention of S 162 Cr P Code is not a ground for a retrial when it has not occasioned a failure of justice. The Court of appeal has to see whether such admission has in fact influenced the mind of the jury so seriously as to lead them to a conclusion which might have been different but for such an admission. (*Henderson and Khundkar JJ*) **NITAI KOLEY v EMPEROR**

ILR (1939) 1 Cal 337

—S 162—Applicability—Summons case—Application by accused for copies of statements made to police—Refusal—Conviction—Sustainability—S 537—Application of

S 162 Cr P Code is applicable to the trial of a summons case as well as to the trial of a warrant case and the accused in a summons case has a statutory right to be supplied with copies of the statements made by witnesses before the police. A refusal to grant him request for such copies vitiates the trial and conviction. S 537 Cr P Code cannot be called in aid to cure the defect as the Court in such a case is bound to assume prejudice to the accused. (*Manohar Lal and Chatterjee JJ*) **DINANATH SAHAY v EMPEROR**

17 Pat 622=180 IC 845=5 BR 501=11 RP 545=40 Cr L J 509=1939 P W N 138=20 Pat L T 70=AIR 1939 Pat 174

—S 162—Construction—Statement under—Admissibility

The words of S 162 Cr P Code as amended in 1923 lead to the conclusion that a statement under S 162 is not admissible even when made by the person ultimately accused. The words of the section are wide

CR P CODE (1898) S. 162

enough to exclude any confession made to a police officer in course of investigation whether a discovery is made or not. (*Lord Atkin*) **NARAYANASWAMI v EMPEROR** 1939 All ER 396=

66 IA 66=18 Pat 234=1939 O L R 134=1939 P W N 205=20 Pat L T 265=

1939 A L J 298=69 C L J 273=41 P L R 272=5 BR 447=41 Bom L R 428=11 R P C 166=

ILR (1939) Kar 123 (PC)=40 Cr L J 361=1939 A W R (PC) 35=49 L W 349=

1939 M W N 185=180 IC 1=1939 O W N 282=43 C W N 473=1939 A Cr C 49=

AIR 1939 PC 47=(1939) 1 M L J 756 (PC)

—S 162—Evidence of identification during investigation—Admissibility

The evidence of a test identification held by the police in course of investigation that is to say a statement expressed or implied made to the police by way of identifying the accused is inadmissible in law in view of the provisions of S 162 Cr P Code. (*McNair and Khundkar JJ*) **KRISHNA KAHAR v EMPEROR** 43 C W N 1117

—S 162—Identification of accused before police—Statement of witness as to—Admissibility

A statement of a witness that she identified the

of defence to use

Police diaries which purport to be diaries kept under S 172 Cr P Code and which do not contain any statement by any witness but are only brief records of what the investigating officer saw when he arrived at the spot, and of information which he ascertained as a result of questions in the minder on a person a EMPEROR

AIR 1939 Cal 252

—S 162—Scope—Charge of attempt to murder—Complaint made by accused to police previously admitting stabbing complainant in self defence—Admissibility against accused

A complaint filed by the accused at a police station against the complainant stating that he stabbed him in self defence is not inadmissible against the accused on a charge of attempt to murder the complainant in respect of the stab on the ground that it is a statement made under S 162 Cr P Code or that it is a confession made to a police officer. (*Pondrang Aro JJ*) **GURU SWAMI TEVAN v EMPEROR** 184 IC 336=

12 RM 435=40 Cr L J 922=1939 M W N 513=AIR 1939 Mad 780

—S 162—Scope—If controls S 27 Evidence Act—Statement falling under latter—If excluded by former See EVIDENCE ACT, S 27

1939 M W N 877

—S 162—Scope—If shuts out statements admissible under S 27 of the Evidence Act See EVIDENCE ACT S 27 50 L W 318=(1939) 2 M L J 455

—S 162—Scope—Statement by accused falling under S 27 Evidence Act—If inadmissible See EVIDENCE ACT S 27 1939 P W N 300

—S 162—Statement by accused to police—Admissibility—True test of

The better and truer test of the admissibility of statements made by accused to police is whether the statement is incriminating in itself or exculpatory. If the

CR P. CODE (1898), S. 162.

statement is incriminating in itself - -- - - -
not desire to put it in evidence, if it
itself, but may, by relation to the o
made an incriminating statement ther
an evidence, because the accused's use
as an exculpatory statement may well be permitted to
prevail to his advantage over the use by the prosecution
of that statement as an incriminating statement.
(Davis, I.C.) PRIGAN HARRISON & EMPEOR.

12 B.S. 90=40 Cr L.J. 882=A.I.R. 1939 Sind 185

—S 162—Statement made to customs officer—
Admissibility.

The Excise Act does not give the customs officer any powers of investigation as conferred upon the police officer under the Criminal Procedure Code. Therefore a statement made to a customs officer does not come within the mischief of S 162, and is therefore admissible in evidence. (*Henderson*)

DASTGIR KHAN v. EMPEROR
184 I.C. 581=12 B.C. 244

—E. 162—Statement to
Portion of statement denied by witness.

In every case when a witness is confronted with a
 version of the statement which he has given the

1. *Journal of the American Medical Association*, 1997; 277: 1033-1037.

1. *Journal of the American Medical Association*, 1997; 277: 1033-1036.

the witness's statement as a whole cannot but be condemned (*Young, C.J. and Blacker J*) EM

PEROR v. JIWAN DAS. I L R (1939) Lah 305—
AIR 1939 Lah 521

—S 162—Statement made to police used in trial

11

CR. P. CODE (1898), S. 181.

confession shall
at if a person in
ssion, he must do
that the Magis
non enquiry from

the person making it, satisfied that it is voluntary; (4) that when the Magistrate records it, he shall record it in the manner provided for in S. 164, Cr. P Code; (5) that only when so recorded the confession will become relevant and admissible in evidence. (B+U, f) THE KING v. SAW MIN 1939 Rang.I.R. 97=

182 I C 705-40 Cr L J 691-12 R R 25-
A I R 1939 Rang 219

—S 165—*Recording of grounds—If mandatory—*

Police officer acting bona fide but not recording grounds—Search if justified.

The provisions of S. 165 to the effect that before

doing so, the police officers, assuming that they commit

trespass, are justified in making the search and are not liable in an action for damages. But it is wrong to say

h. resulted in recovery of
justifies the illegality,

whether the police officers
of their minds at the

time of making the search AIR 1935 Nag 237,
Diss (Skemp, f) MAINGAL SINGH v GHULAM

1841 C 6 = 12 R L 154 =
A I R 1939 Lab. 280.

CR. P. CODE (1898) S 181

J.) PATEH SINGH v. EMPEROR.

1339 A W.R. (H.C.) 784 = 1939 A Cr C. 198 = 1939 A L.J. 1060

—S 181(2)—Territorial jurisdiction—Complaint and sending postal order from M to accused in B—Complaint of offences under Ss. 403 and 417, I. P. Code—Proper forum

Where it is alleged by the complainant residing at M that he posted certain postal orders at M payable to an

CR. P. CODE (1898), S. 195.

of S 191 had been substantially complied with, and the accused could have no right to anything beyond what had actually taken place (*Dhale, J.*) PANU SAMAL v. EMPEROR 1939 P.W.N. 803.

—S 191—Applicability and scope—Magistrate

191 and 537—Non compliance with S 191—subsequent proceedings

ire of a Magistrate to inform the accused that he is entitled to have the case transferred to another Magistrate renders all subsequent proceedings before the Magistrate void, and this is an illegality which is not curable by S 537. (*Tek Chand and Blacker, J.*) ARJAN SINGH v. EMPEROR. 184 I.C. 680 =

A.I.R. 1939 Lah 479

—Ss 192 and 202—Transfer of case—Power of Magistrate after calling for police report. See CR P CODE Ss 202 AND 192 41 P.L.R. 807.

—Ss 195 and 476—Applicability—Execution of decree—Attachment—Obstruction to—Complaint under S 186, 379 or 424—Complaint by Court—Necessity

No complaint of the Court is necessary for an offence under S 186 379 or 424, I. P. Code, against persons alleged to have obstructed an amn attaching property in execution of a warrant of attachment. (*Lakshmana Rao, J.*) RENGASWAMI THEVAN v. EMPEROR. 1939 M.W.N. 886.

—S. 195—Disobedience to orders of Magistrate—Prosecution for offences under Ss 447 and 188 Penal Code—Same Magistrate trying case—Validity—Need for complaint

The proceedings started with a complaint by the Police against a certain person for offences under Ss 447 and 188, Indian Penal Code, in respect of a certain act which was said to have constituted disobedience of the orders of the sub-Magistrate issued under S 144, Cr. P. Code.

1914, that there should have been no cognizance taken on the case without a proper complaint as enacted by S 195, Cr P Code that in any case the sub Magis-

decided the case him-
should therefore be
ERAPPAN MOOPAN,
'52 = 12 E.M. 263 =
'10 = 49 L.W. 474 =
(1939) 1 M.L.J. 673.

—Offence of forgery
before Court, form-
offences which Court

at one Court should
f that were so, the
with the making of

t is entrusted by the
with this power, it

1939 A W.R. (H.C.) 570 = A.I.R. 1939 All 602

—S 188 — Certificate under — Necessity—Marriage in Native State in contravention of the Child Marriage Restraint Act. See CHILD MARRIAGE RESTRAINT ACT, Ss 5 AND 6 1939 A M.L.J. 130

—S 188 Proviso—Scope—Offence under Child Marriage Restraint Act committed beyond British India—Prosecution—Certificate from Political Agent or sanction of Local Government—Necessity. See CHILD MARRIAGE RESTRAINT ACT 49 L.W. 656

—S 190 (1) (a)—Complaint against receiver—Leave of Court appointing him specifically asked for but not granted—Propriety of entertaining complaint.

Assuming that a Magistrate has jurisdiction to entertain a complaint against a receiver in the absence of leave of the Court which appointed him, it would not be proper for him to do so when there is no specific leave from that Court for the institution of a criminal case, although leave had been specifically asked for. Although this may not be a bar to jurisdiction, it is certainly relevant on the question of the propriety or desirability of criminal proceedings (*Akhundkar and Rau, J.*) JNANENDRA NATH PRAMANIK v. NILA ONY DEY

I.L.R. (1939) 1 Cal 587 = 184 I.C. 603 = 12 E.O. 245

—Ss 190 (1) (a) (b) and (c) ability—Sub Divisional Magistrate petition of complaint and cognizance under S 190 (1) (c)—S. 191—Application of—Trial of case by Magistrate succeeding original Magistrate—If in contravention of S. 191.

by that Magistrate but by his successor, the latter

by that Magistrate but by his successor, the latter

CR. P. CODE (1898), S. 195.

follows that it is itself entitled to inquire into an alleged offence committed in relation to proceedings before it, provided no other section of the Cr. P. Code bars the way, when that alleged offence is part of the same transaction, with the offences of which the Court has already taken cognizance, and the Magistrate can in such case convert the proceedings before him into one for commitment to the Court of Session (*Datt, J.C. and Tyabji, J.*) *JASHANMAL v. EMPEROR*.

183 I.C. 619 = 12 R.S. 64 = 40 Cr. L.J. 818 (2) =
A.I.R. 1939 Sind 222

—S. 195 (1)—Object of—'Public servant concerned,' meaning of

The object of S. 195 (1) (a), Cr. P. Code appears to be that the person best qualified to decide whether complaint should or should not be made, should have the power to make a complaint. Hence the words 'public servant concerned' in S. 195 (1), Cr. P. Code, cannot mean or have reference to any particular person but can only refer to any person who happens to hold

CR. P. CODE (1898), S. 195.

summary is given within the provisions of S. 195 (1) (b), for the giving of "B" summary is merely an administrative and not a judicial act (*Datt, J.C. and Tyabji, J.*) *MT. RAJI v. ALLAUDIN*

180 I.C. 650 = 11 R.S. 183 = 40 Cr. L.J. 461 =
A.I.R. 1939 Sind 65.

—S. 195 (1) (b)—Applicability—Defamatory statement in deposition made in Court—Offence—Prosecution—Complaint by Court—Necessity—Penal Code, Ss. 193 and 500.

The making by a person of a defamatory statement in a deposition as a witness in a case, which is found to be deliberately false, is an offence under S. 193, I. P. Code, and as such cannot be taken cognizance of without a complaint by the Court before which it is made. Parties cannot be allowed to evade the provisions of S. 195 (1) (b), Cr. P. Code, by filing a complaint under another provision of the Penal Code, viz., S. 500 I. P. Code. (*Lakshmana Rao, J.*) *GANAPATHI ASARI v. KUPPUSWAMI ASARI*.

183 I.C. 179 (1) =
40 Cr. L.J. 757 = 12 R.M. 250 = 49 L.W. 456 =
1939 M.W.N. 320 = (1939) 1 M.L.J. 614.

—S. 195 (1) (b) Applicability—False allegations in affidavit and sworn statement filed in Court—Complaint of defamation founded on—Complaint by Court—If condition precedent to—Maintainability.

A complaint of defamation founded on allegations, which are stated to be false, contained in an affidavit and sworn statement filed in a Court of law, is a com-

plaint by the Cr. P. Code, and to evade the Code, by filing a complaint under S. 193, I.P. Code, is an offence under S. 195 (1) (b). (*Lakshmana Rao, J.*) *UNDARAM v. I.C. 86 = 40 Cr. L.J. 757 = 12 R.M. 250 = 49 L.W. 456 = 1939 M.W.N. 320 = (1939) 1 M.L.J. 614.*

—S. 195 (1) (b)—Applicability—Offence of making

(b) does not apply to a prosecution for the making of a false charge which had not reached law. The accused made a report at a police station charging certain persons with an offence

under S. 195 (1) (b).

—S. 195 (1) (a)—Order refusing to

—Appeal

No appeal lies from an order by a

under S. 195 (1) (a) Cr. P. Code, refusing

complaint of an offence under S. 195

(*Lakshmana Rao, J.*) *MARUDA PILLAI v. SWAMI PILLAI*.

181 I.C. 557 = 11 R.M. 830 =

40 Cr. L.J. 568 (2) = 49 L.W. 387 (1) =

1939 M.W.N. 119 = A.I.R. 1939 Mad 836

—S. 195 (1) (a)—'Public servant'—False information given to Sub-Inspector—Complaint filed by superior in office—Validity

The proper construction of the words "public servant

concerned" in S. 195 (1) (a) is the public servant holding

office for the time being the office held by the public ser

vant concerned.

—S. 195 (1) (b)—Applicability—Offence under

S. 193, I.P. Code—Fabrication of evidence to be used

in contemplated suit—Prosecution for—Complaint by

Court—Necessity—Absence of complaint—If vitiates

whole proceedings.

—S. 195 (1) (b)—Applicability—Offence under

S. 193, I.P. Code—Fabrication of evidence to be used

in contemplated suit—Prosecution for—Complaint by

Court—Necessity—Absence of complaint—If vitiates

whole proceedings.

CR P. CODE (1898), S. 195.

respect of proceedings in a Court of law which were contemplated but which in fact were never started. But if the fabrication is in relation to a claim made in a suit actually filed in Court, though the suit is instituted only later, a complaint by the Court is necessary in regard to a charge under S. 193, I. P. Code. Absence of complaint in respect of the charge is a defect which affects the entire proceedings. Where the Court has acted without jurisdiction with regard to a part of the trial the whole proceedings are vitiated by the illegality. (*Hassidew and Sen, JJ.*)

181 IC 870-12 RB 358-40 Cr LJ 579-41 Bom LR 98-A I.R. 1939 Bom 129
—S 195 (1) (b)—Necessity for sanction—Complaint to police—No action—Complaint to Court thereafter—Police complaint under S. 211, I. P. Code, against such complaint—Undesirability.

Where a person complained of theft to the police and on their failure to take action filed a complaint in Court and the police thereupon filed a complaint under S. 211, I. P. Code, against such a complainant the sanction of the Court, wherein the complaint for theft was pending, is necessary. The complaint under

the police to evade the provisions of S. 195, Cr P. Code, by filing a complaint under S. 211, I. P. Code on the complaint by a police officer. The wording of S. 195 (1) (b), Cr. P. Code, is wide enough to require that in the above circumstances the Court itself shall make a complaint. (*Polla & J.*)

181 IC 928-11 RN 401-40 Cr LJ 638-1939 N LJ 210-A I.R. 1939 Nag 226

—S 195 (1) (b)—Offence under S. 211, I. P. Code—Police reporting case to be false and praying for complainant's prosecution—Latter filing 'narari' petition by way of showing cause—Sanction of Magistrate—If necessary for his prosecution.

Where on the police reporting a case to be a false one

not necessary before the complainant could be put upon his trial (*Bartley and Henderson, JJ.*)

JAMINI KANTA GHOSE v BHABANATH JAISI
183 IC 384-40 Cr LJ 785-43 OWN 279-A I.R. 1939 Cal 273

—S 195 (1) (b)—Offence under S. 211, I. P. Code—Private complaint—Maintainability.

It is not the intention of the Legislature that an offence under S. 211, I. P. Code, can be made subject

CR P. CODE (1898), S. 197.

offence of criminal conspiracy under S. 120 B, I. P. Code. If the intention is to give conspiracy

has to be determined at the initial stage not only by reference to the sections of the Penal Code mentioned in the complaint, but also upon the facts narrated therein and the evidence tendered. There is recognisable difference between the object of a conspiracy and the means adopted to realize that object. If they are separable then even if the object of the accused—which is not to commit a non cognizable offence—is sought to be attained by resort to non cognizable offences, no sanction is necessary. It does not matter if the object is mixed up erroneously with the statement of method of attaining it in the body of the complaint. It is perfectly open to the Magistrate upon the evidence to dissect the facts in order to decide the question of sanction. (*Hassidew and Sen, JJ.*)

181 IC 870-11 RB 356-40 Cr LJ 579-41 Bom LR 98-A I.R. 1939 Bom 129.
—S 197—Applicability—"In the discharge of his official duty"—Meaning of—President of Panchayat Court—Abuse and assault of person objecting to procedure adopted by him—Sanction of Local Government—Necessity.

A complaint against the President of a Panchayat Court alleged that when the President was about to write the Court's order dismissing the complainant's petition, the complainant objected to the dictation by the clerk of the President of the order to be pronounced in the matter, and asked the President not to allow the clerk to dictate the judgment as the Court was bound in law to write its own judgments and that on account of this objection taken by the complainant the President got up from his seat abusing the complainant slapped him on the cheek twice, and also threatened to beat him with his shoe.

Held, that the acts alleged against the President must be deemed to have been done when he purported to act though it was not assault. To interfere with his official duty in acts done strictly within his jurisdiction would

render any protection unnecessary, because an act which is completely within the scope of one's official duties can never be an offence. It is only where offences are committed by a Judge that the necessity for protection comes in, and the protection is limited to cases where the offences are committed while the Judge purports to act in his official capacity though undoubtedly he has outstepped the limits of his duties. Sanction of the Local Government would therefore be necessary for prosecuting the Judge in respect of such offence. (*Pandurang Row, J.*)

—S 197—Applicability—Officiating kulkarni—Collection of land revenue and misappropriation—Prosecution—Sanction—Necessity—Bombay Hereditary Offices Act S. 58.

CR. P. CODE (1898), S. 197.

meaning of S. 197, Cr. P. Code. But sanction under S. 197, Cr. P. Code, is only required for a prosecution for an offence committed while acting or purporting to act in the discharge of official duty. Where an officiating *kulkarni* collects money on account of land revenue, and, instead of sending it to the treasury, own purposes, it cannot be said that in priating the amount, he is acting or purporting to discharge of his official capacity, and he be prosecuted for misappropriation without sanction under S. 197, Cr. P. Code. (*Broomfield and Macklin, JJ*) EMPEROR v. GURUSHIDAYYA.

LLR. (1939) Bom. 119 = 179 I C 686 =
11 R B 287 (2) = 40 Cr L J 269 =
40 Bom L R 1286 = A I R 1939 Bom. 63

—S. 197—Criminal breach of trust by public servant—Sanction for prosecution—If necessary.

No sanction under S. 197, Cr. P. Code, is necessary for the p under S. offence th be acting in misapp direct opp vides him offence. Lab. 781 EMPERO

—S.

District Council taking bribe before making some ap pament at Council meeting.

No doubt, if a public servant is actually engaged in the discharge of his duties, or is ing to be so engaged, and com sanction of the Local Governmer before a Court can take cognizar enough for a public servant to be in an official position, which he may abuse, in order to bring him under the section: he must be purporting, or pretending to act in pur-ance of his official duties. Where certain members of a District Council took a bribe to influence their decision in the appointment of a particular person as a permanent overseer of the Council

CR. P. CODE (1898), S. 197.

Inspector. Therefore an Inspector cannot claim that he is removable from office only with the previous sanction of the Local Government and hence sanction under S. 197 is not necessary for the prosecution of an Inspector of police. (*Davis, J. C. and Weston, J.*) NIAZ

gest to accused before sanction—Irregularity—Difference between this section and S. 270, Government of India Act

been received he cannot again commence to take valid cognizance. The complaint or police report not being invalidated by the absence of the sanction under S. 197

can form the legal basis for the issue of process under S. 190. In the case of S. 537, Cr. P. Code, is applicable to the circumstances of the present case. Where in a case which requires sanction under S. 197, all that a Magistrate does before the sanction is received is to issue process against the accused and secure their attendance, his omission to void for want of jurisdiction but it cannot be said that his omission to issue fresh process to the accused after the sanction had been received which

sary (*Roberts, C. J. and Spargo, J.*) U TUN KYWE v. THE KING. 1939 Rang L R. 72 = 179 I C. 679 = 40 Cr L J 243 (2) = 11 R R 337 = A I R 1939 Rang 17

—S. 197—Inspector

Sanction—Necessity

An Inspector of Police "subordinate ranks" in Act. His appointment as General under S. 10 of the Act or removal is governed by the provisions of S. 24, which by virtue of S. 243, Government of India Act,

DISORDER. JJ. ARJAN SINGH v. THE KING. 184 I C 680 = A I R

—S. 197—Prosecution of person removed from office—If necessary.

ment in S. 29 (3) includes power to suspend, reduce or remove. Under S. 29 (3) it is the Inspector General or the Deputy Inspector General who is to suspend the

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a member of a non-city and the Commissioner is not able from his office

CR P CODE (1898), S 197.

Local Government'. Hence when such a person is prosecuted for an offence under S 409, I P. Code without

—S 197—Sanction obtained after filing complaint—Trial, if initiated

In dealing with all technical objections of procedure the final test is whether or not the accused has in any way been prejudiced by the alleged irregularity. The object of sanction under S 197, Cr P Code is that a public servant should not be unduly harassed. The word 'institution' should not be given a very narrow meaning. In one sense it is true a Court takes cognizance of a matter as soon as it makes any order, how ever formal but even if such formal orders are considered to have been made without jurisdiction this flaw will not affect orders made after the defect has been removed and the Court is properly seized of the case. In prosecution against a public servant sanction under S 197, Cr P Code, was not obtained before the institution of the complaint. But the sanction was actually put on record before the evidence in the case was recorded.

he trial could
ALL P EM
19 IO 778—
LR 154—
AIR 1938 Lah 1

—S 197—Vice-chairman of Municipality—Sanction for his prosecution—Necessity for—Bengal Municipal Act

A commissioner who has been elected a vice chairman of a municipality cannot be prosecuted for acts done in the exercise of his office as vice chairman without the

second signatory there is not taken (Barltby and Rau

CR P. CODE (1898), S 202.

specified. If he wishes to postpone the issue of process under S 202, he must comply with the provisions of that
eliminary inquiry, he
must do so accord
on in S 203 for the
order disposing of a
summary order under

class C", is not according to law. A complaint cannot be dismissed by the issue of such a summary. A Magistrate is bound under the Code to exercise his own independent judgment when he receives the report of the investigation or inquiry that he has ordered and it is not an exercise of his independent judgment when he merely accepts without giving reasons the opinion of the police prosecutor. The Magistrate should not surrender his discretion or judgment to that of the police prosecutor. (Davis J C) JOOMAL TIKANIDAS v. EMPEROR (ILR 1939) Kar 277-123 IO 440-40 Cr LJ 807-12 R S 57-A IR 1939 Sind 208.

—Ss 202, 203 and 204—Complaint—Issue of process—Duty of Magistrates

If a Magistrate thinks upon a reading of the complaint and examination of complainant, that a *prima facie* case is shown, he may order process to issue at once. If he is doubtful he may order enquiry. But he is, of the person holding inion and statements and order a case to be accused has not (J C V) BANO v. 1939 A M LJ 41.

—Ss 202 and 203—Dismissal of complaint after issue of process—Legality

A Court cannot dismiss a complaint under S 203, Cr P Code after process has been issued to the accused person. The stage for holding an enquiry under S 202, Cr P Code is passed when the process for the attendance of the accused person is issued by the Court and cannot be revived by another Magistrate as he cannot go back beyond the stage reached by his predecessor. (Abdul Quayum, C J and Kischu J) SITA KAM v. STATF 41 PLR J & K 26

2—Enquiry under—Lengthy cross examinations by Magistrate—Permissibility

of the inquiry. Magistrate are not tied in questioning the witnesses when they are under S 202. It would be dangerous to lay down fast rules as to how far the Magistrate trying to elicit the truth from the witnesses conducting an enquiry behind the back of

It is commendable on the part of the to show keenness in finding out the truth or case before he gives the accused person the appearing before him in response to a criminal case the anxiety of the trial Magistrate to uth and his intensive cross examination of

AIR 1939 Pesh 16

—Ss 202 and 192—Transfer of case—Power of Magistrate after calling for police report

If a Magistrate acts under S 202 Cr P Code and sends the case for enquiry and report to the police, he cannot, on receipt of the report send the case for disposal to a Subordinate Magistrate without deciding whether the case should be dismissed under S 203 or proceeded with under S 204. The Subordinate Magistrate in such circumstances is not properly seized of the case and his order summoning the accused is, therefore,

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CR P CODE (1898), S 203.

without jurisdiction (*Dalit Singh, J.*)
SINGH v GAHWAR KHAN.

—S 203—Complainant not present
Order consigning case to record room
police report—Legality.

Even if the complainants who are Government employees are not present on the date fixed for the hearing of the case, the trial Magistrate ought to examine the record and proceed to dispose of the case on merits according to law. The mere fact that the complainants are not present on that particular date is by itself no sufficient ground for the trial Magistrate to record his agreement with the report submitted by the local police in regard to the facts of the case, and to consign the case to the record room. It is his duty to satisfy himself whether the report made by the police is in order (*Abdul Qayyum, C.J. and Kichlu, J.*) STATE v FATEH DIN 41 P L R J & K 41

—S 203—Scope—Duty of Magistrate—Complaint—Dismissal on ground that accused has possible defence—Legality of

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revision (*Agarwala, J.*) SHEUDANI LATHAK v BUDHESHWAR DUBEY 1939 P

—S 204—Registration of a case under
lar section—Who can do it.

Though of course a Magistrate has to decide under what section the offence disclosed falls, for purposes of the procedure to be followed in the trial, yet the Cr. P. Code nowhere prescribes the registration of a case under a particular section. Under S 204, Cr. P. Code, the decision rests with the "cognizance" (*Norman*) KANHAIYA

—S 204 (3)—Applicability

S 204 (3), Cr P Code, appears to of process to the accused at the first instance (*Agarwala, J.*) EMPEROR v NIRPATISINGH 1939 N L J 201

—S 205—Personal attendance—Dispensing with—Pardanashin lady

The power to dispense with the personal attendance is to be liberally exercised where the person concerned is a pardanashin lady. (*Davies*) ABDULLAH KHAN v. KARIMAN 1939 A M L J 129

—S 208—Scope of—Committal—When to be made.

A committal to the Court of Session is a very serious matter indeed for an accused person, and he is to be given every reasonable opportunity to show that there is no ground to commit him to the Court of Session because of the evidence he has adduced in his defence. The purpose of committal proceedings is not merely to place on record the case for the prosecution, but to commit to the Court of Session for trial an offence which after having heard the evidence for the prosecution and for the defence, the Magistrate thinks has been committed. It is true that under S 208 (3) a Magistrate can for reasons to be recorded refuse to issue process to compel the attendance of any witness, but the section clearly contemplates evidence on behalf of the prosecution and evidence on behalf of the accused or evidence which may be called by the Magistrate, if he thinks it in the interests of justice. Therefore it is not

CR. P. CODE (1898), S 225.

to call evidence on committal proceedings opportunity to pro- ish later on when they have been committed. Particularly in a case where a charge of forgery is brought for the first time against an accused in the course of proceedings for other offences, every proper opportunity should be given to him to meet a charge which he may with some reason say has taken him by surprise (*Davies, J.C. and Tyabji J.*) JASHANMAL v EMPEROR, 183 I C 619=12 R S. 61=40 Cr L J 818 (2)= AIR 1939 Sind 222.

—S. 209—Duty of committing Magistrate—Test to decide whether there should be a committal or not—Refusal to commit—Grounds for

The committing Magistrate's duty is to consider whether a conviction is possible in the case, and in order to come to that conclusion he is entitled to appreciate the evidence. But he must appreciate the evidence from within his province to the point of view of a conviction possible, it is the duty accused for trial. If the grounds of such conviction is possible, to see whether a conviction real function is to not (*Hadia and MAHOMED*) 40 Cr L J 951= 1939 Bom 372.

—S 222 (2)—Applicability—Misappropriation of cash and goods—Single charge in respect of cash and value of goods—Legality.

S 222 (2), Cr. P. Code applies only to a case in which the charge is criminal breach of trust and character

the goods a charge is) PUBLIC 4 I C 51=

40 Cr L J 851 (2)=12 R M 401= 1939 M W N. 468=A I R 1939 Mad 575= (1939) 2 M L J. 518.

—S 222 (2)—Charge of criminal breach of trust—Amounts appropriated on different occasions by different transactions—Specification of particular items or exact dates—Necessity

In the case of a charge of criminal breach of trust involving amounts appropriated on several different occasions—sary under s ular (J.) EMPEROR

—E 129. of conviction.

Before a conviction of an accused person can be reversed on the ground that the charge against him was not drawn up in a satisfactory manner, he must show that he was prejudiced thereby (*Henderson and Khandkar, J.J.*) MUKHERJEE v. EMPEROR.

CR. P. CODE (1898), S. 233,

—Ss 233, 234 and 235—*Applicability and scope*
—*Same transaction*—Charge under S. 408, I. P. Code, in respect of several sums of money appropriated on different occasions and under different transactions—*Joiner of further charges* under St. 477 A and 193 read with S. 109—*Legality*.

A charge of criminal breach of trust in respect of several sums of money appropriated on different occasions by different transactions cannot be properly joined with other charges under Ss. 477-A and 193, I. P. Code read with S. 109, I. P. Code, as the offences are distinct. The offence of falsification of accounts is certainly a distinct offence, falling as it does under different section of the Penal Code. The offence of fabrication of false evidence relating to items wholly or partly unconnected with the charge of criminal breach

obviously apply because the offences are not of the same kind. A misjoinder of charges for distinct offences cannot be cured under S. 537, Cr. P. Code. If the falsifications of accounts charged is not part of the transac

CR. P. CODE (1898), S. 238,

could be remedied by S. 537, Cr. P. Code. (*Jamsil, J.*)
THAKUR SINGH v. EMPEROR.

184 I O 409 = 12 R A 228 = 40 Cr L J 918 =
1939 A L J 517 = 1933 A Cr O 121 =
1939 A W B (H O) 576 = A I R 1939 All 665.

—Ss 233, 236, 237 and 423—*Conviction for offence not charged*—*Validity*—*Powers of appellate Court*.

A person cannot be convicted of an offence without being definitely charged with it. Where a person was charged with an offence under S. 418, I. P. Code, and

A I R 1939 All 710

—S. 235—*Applicability*—*Test*—*"Same" transaction*—*Evidence to prove several offences identical*—*Joint trial*—*Refusal to hold on the ground that corpus delicti is not same in all*—*Priority of procedure*

The test for applying S. 235, Cr. P. Code is to see

other country (*Varma and Rowland, J.*) EMPEROR
v. MAYADHAR POTHAL 18 Pat 450 =

1939 P W N. 300 = 181 I O 1001 = 5 B R. 708 =
11 R P 653 = 40 Cr L J 625 =
20 Pat. L. T. 420 = A I R 1939 Pat 577.

—S. 235 (1)—*"Same transaction"*—*Meaning of*—

the word transaction is usually used to include the steps leading to a conclusion or resulting in action though often transaction emphasises the fact of something done or brought to a conclusion. To ascertain whether a series of acts are parts of the same transaction it is essential to see whether they are linked together to present a continuous whole. The expression "same

mon purpose does not constitute a transaction. Nor with concert and conspiracy make the same transaction.
IR v. RAMCHAN
10 = 11 B B 356 =
41 Bom L R. 98 =
3 1939 Bom 129.
J. P. Code—*Conspiracy*.
S. 326, I. P. Code,
under S. 307, I. P.
under S. 326, I. P.

difficult to defend the charge on the principle applicable to a trial upon a charge of conspiracy for the purpose of defrauding where the complaint does not indicate an offence punishable under S. 120 B of the Penal Code. In view of the language of S. 109 I. P. Code, it cannot be said that abetment by conspiracy involves a general agreement to do a series of acts of which the abetted act is one. Even assuming that end of a long spell new circles again agree to make a

their account with a view to prolong the refund of the money misappropriated, that would strictly be a second conspiracy independent of the first. The results of the acts committed under the latter conspiracy cannot be tacked on to a charge on the former. (*Wassooda and Sen, J.*) EMPEROR v. RAMCHANDRA RANGU

181 I O 870 = 11 B B 356 = 40 Cr L J 579 =
41 Bom L R 98

—Ss 233 238 and 537—
P. Code, but conviction under
Cr. P. Code, if applies—*Curial Code*

CR. P. CODE (1898), S. 239.

Code, on a charge framed under S. 307, I. P. Code, on the specific allegation that he caused hurt to the complainant is not unsustainable simply because no formal charge under S. 326, I. P. Code, was drawn up. (*Bartley and Raw, JJ*) SK. IORIS v EMPEROR

43 CWN 782

—S 239—Persons charged under S 368 I. P. Code, for separate acts of concealment—Joint trial—Legality.

There is no provision of law under which persons charged under S. 368 I. P. Code, for separate acts of concealment of the same girl can be tried together. (*Bartley and Henderson, JJ*) DURGAMONI DASSI v. EMPEROR.

43 CWN 196.

—Ss 239 and 537—"Same offence"—Meaning of—Two persons charged with same offence of murder—Evidence against them mutually exclusive—Legality of their joint trial

"The same offence" in S. 239 means an offence arising out of the same act or series of acts and can mean nothing else. When one accused is charged with having murdered a certain person at a certain place and

CR P CODE (1898), S. 250.

framed for the separate offences which went to make up that transaction. (*Bartley and Henderson, JJ*). NANDA GHOSH v EMPEROR. 182 I C 322= 12 R C. 40=40 Cr.LJ 649=A I R 1939 Cal. 321.

—S 244—Discretion of Magistrate.

Under S. 244, Cr. P. Code, a Magistrate has, no doubt a discretion to refuse to summon witnesses, but he cannot completely ignore an application made for summoning witnesses. He must consider it and pass orders on it. Where a Magistrate has granted the first application, the presumption is that he would also grant a second application when the witnesses do not appear in Court. (*Blacker, J*) VIDYA PAKKASH v. EMPEROR 41 P L E 804.

—S 247—Several complaints on same facts—Absence of one of the complainants—Acquittal—Validity.

When more than one complaint is made of an offence arising out of the same set of facts, the word 'complainant' in S 247, Cr. P. Code, should be construed to include all persons who have made complaints. Notice of hearing should be given to all of them and it is only when

complainant—Permission for withdrawal of complaint—Discretion of Magistrate.

Where a complaint related to two offences—one under S. 323 of the Ranbir Penal Code and the other under S. 24 of the Cattle Trespass Regulation,—and the evidence for both the offences was the same, and the matter was compounded by the complainant, the Magistrate while dropping the proceedings relating to the offence under S. 323 which is compoundable should not continue against the wishes of the complainant the proceedings in regard to the minor offence, although it is non compoundable. In a case like that, the Magistrate ought to properly exercise his discretion under S. 248, Cr P Code, and permit the complainant to withdraw the complaint. (*Abdul Qayoom, C. J. and Wazir, J*) THAKAR v STATE 41 P L R. J. & K 93.

—S 250—Applicability—Petition to Premier against Sub Inspec tor—Substantiation on oath before

D O. he appeared and made a statement on oath in respect of his allegations in the petition, this amounts to a complaint as defined in S. 4 (a), Cr P Code, and when

—S 250—Jurisdiction—Discharge or acquittal—Notice to complainant to show cause against order of compensation—Subsequent retirement of Magistrate—Jurisdiction of successor to continue proceedings.

In sub S (1) of S. 250, at least, the only Magistrate who may call upon the complainant to show cause is the Magistrate who heard the case and who discharges or acquits all or any of the accused "The Magistrate" in sub-S (2) to S. 250 refers to the Magistrate in sub-S (1) and the definite article "the" does not mean the Magistrate who succeeds the Magistrate who heard the case or any other Magistrate. Hence where a Magis.

mitted in the course of the same transaction within the meaning of S. 239. There is no provision of the Code under which those persons can be tried together and such a joint trial is not a mere irregularity which can be cured under S. 537 but it is an illegality which goes to the very root of the trial. (*Dunkley and Wright, JJ*) NGA SAR KEE v THE KING.

A I R, 1939 Rang 390

—S 239—Same transaction—Wrongful confinement and use of force to extort a confession—Joint trial—Legality—Sameness of transaction—Relevant point of time

Where several persons are accused of wrongful confinement and the use of force, in order to extort a confession, the unity of criminal behaviour and the common intention prompting it would render all that was done in furtherance of the common object, as a part of one transaction. The acts of violence done are so related to one another in point of purpose, as to constitute one

PROVINCIAL GOVERNMENT C. P. & BERAR v DINANATH LALA.

I L R (1939) Nag 644=

184 I C 412=12 K N 111=

1939 N L J. 373=A I R 1939 Nag 644

—S 239 (d)—Separate offences in time—Separate charges—Necessity for

A married girl under 16 years of age returned to her husband's house after a visit in a village. On the way she passed through a field where three persons were waiting. They accused her. He asked her to come inside on the pretext that his wife wanted her. When she went in he bolted the door and demanded that she should remain with him. In the night he ravished her. Later on, he took her out and was joined by the other three accused. They took her away, and according to her story, her ornaments were taken off. All were jointly charged both with kidnapping and abduction.

Held, that the whole incident could not be regarded as constituting a single offence. Though it might be said that the whole occurrence was one single transaction even in that case separate charges should have been

CR. P. CODE (1898), S. 250.

Magistrate who has called upon a complainant to show cause why he should not pay compensation for having made a false and frivolous charge, the notice passed, the notice charged (*Da MAHMOED AL*)

—S. 250

with procedure—*Only by Magistrate.*

For making an order for compensation under S. 250, Cr. P. Code, a Magistrate is bound to record the reasons and before doing so he should record and consider any objection the complainant makes or any cause he may show (*Kichlu J*) NIKKU RAM v. REHMAN

41 PLE J & K 18

—S. 250—Order under—*Legality—Absence of finding as to accusation being false.*

An order granting compensation to the accused under S. 250, Cr. P. Code, is illegal if no finding is recorded by the Magistrate that the accusation against the accused is false and either frivolous or vexatious. A mere remark by the Magistrate that the complainant has no objection to pay compensation is not sufficient for passing an order under that section (*Abdul Qayoom, C J and Wazir, J*) GOKAL CHAND v. STATE

41 PLE J & K 88

—Ss 252 and 253—*Examination of witnesses—Recalling for cross-examination—Procedure to be adopted by the Magistrate.*

The ideal procedure as regards the examination of witnesses would be to examine all prosecution witnesses on one day or perhaps on two consecutive days, so that all would be present and ready to be cross-examined. If the accused exercised his rights under S. 256 Cr. P. Code. If the witnesses are allowed to go and are then to be recalled, it throws a heavy burden both on the complainant and the witnesses which should be avoided as far as possible (*Pollock, J*) EMPEROR v. NIRPAT-SINGH. 1939 N L J. 201.

—S. 253 (2)—*Discharge of accused without examining complainant—Power of Magistrate.*

Under S. 253 (2), Cr. P. Code, the Magistrate may in a suitable case come to the conclusion that the charge is groundless even before he has heard the com-

allegations in the complaint

of the complainant under S. 253 (2) without calling upon the complainant to produce the rest of his evidence (*Blacker, J*) SHIV DATTA v. B. K. SOOD 41 PLE J. 702.

—Ss 253 (2) and 252—*Order of discharge without taking evidence of complainant or his witnesses—*

if...

CR. P. CODE (1898), S. 256.

taking the evidence of the complainant or any of his witnesses. S. 252, Cr. P. Code, is not concerned with

69 C.L.J. 186—A.I.R. 1939 Cal. 329.

—S. 253 (2)—*Prosecution under S. 406 I. P. Code—Order of discharge after examining only few of prosecution witnesses—Propriety.*

In a case under S. 406, I. P. Code, the question of *tryst* must be fully inquired into and for this purpose it is necessary that the whole of the prosecution evidence should be recorded. It is impossible to guess at an intermediate stage in the case, what would be the result of the inquiry. The Magistrate is not so much concerned as to whether the offence has been committed against the complainant but whether an offence has been committed which is punishable according to law. Therefore in a case under S. 406, when only a few of the prosecution witnesses have been examined it is too premature to decline to examine any more witnesses for the prosecution and discharge the accused on the ground that the case is of a civil nature (*Hackney, J*) CHAN ELLIAM v. WELLINGTON

181 I.O. 471 (2)—12 R.E. 148—

A.I.R. 1939 Rang. 377.

—S. 256—*Applicability—Summary trial—See Cr. P. Code, Ss. 262 and 256* 1939 N L J. 7.—S. 256—*'Hearing', meaning—See Cr. P. Code, S. 256—PROPER PROCEDURE TO BE FOLLOWED.* 1939 A.W.R. (H.C.) 1.—S. 256—*Irregularity in procedure—Effect—See Cr. P. Code, S. 256—PROPER PROCEDURE TO BE FOLLOWED* 1939 A.W.R. (H.C.) 1.—S. 256—*Proper procedure to be followed—Adjournment to next day after examination of prosecution witnesses taking of accused's statement, framing of charge and recording plea of accused—Accused asked about further cross-examination on the next day—Procedure, if regular—Hearing, meaning of—Irregularity in procedure—Effect.*

the day the prosecution witnesses accused's statement was taken, the day explained and the accused had and the hearing was adjourned to

1939 A.L.J. 81—1939 A.W.R. (H.C.) 1—1939 A.C. 17—A.I.R. 1939 All. 238.

—S. 256—*Scope—Magistrate calling upon accused forthwith on framing charge whether he wished to cross-examine prosecution witnesses—Omission to give reasons—If illegality vitiating trial?*

question whether the prosecution witness he charge is framed the Magistrate in a

CR. P. CODE (1898), S. 259.

CR. P. CODE (1898), S. 276.

accused at all whether he wished to prosecute witnesses, that would be might be an incurable illegality. (*Varms, J.*) *NISAR AHMAD v. EMI*

180 I C 839=5 B R. 45

40 Cr L J. 419=1938 P W N. 832=

19 Pat. L T. 815=A I R. 1939 Pat 172

—S. 259—Scope—Complaint mentioning cognizable and non-cognizable offence—Complainant absent on date of hearing—Discharge—Legality—Fresh complaint—Proceedings on—If vitiated—Prejudice to accused—Necessity to prove

ma

been prejudiced (*Abdullah and Mackinn, J.*) *ALI MAHOMED JOOSAB v. KASTURCHAND*

180 I C 241=11 E

41 Bom L R

—S. 260—Trial of
many procedure—Propriety.

It cannot be laid down as a broad proposition that a

Lall, J.) *M. A. KHAN v. EMPEROR*

I L R. (1939) Lab. 221=184 I C. 458=12 E L. 225=

41 P L R. 743=A I R. 1939 Lab 467.

—Ss. 262 and 256—Summary trial—Warrant cases—Right of accused to have prosecution witnesses recalled for further cross-examination

In a warrant case tried summarily the accused is entitled to have the prosecution witnesses recalled for further cross examination, after the evidence on which

1939 N L J 7=A I R. 1939 Nag 87.

—S. 276—Judicial Commissioner's Court—If a Court of Session.

The Judicial Commissioner's Court is a Court of Session following the procedure of a High Court, as the Bombay High Court, in Criminal Sessions (*Davis, J C and Lobo, J.*) *SHEWARAM v. EMPEROR.*

184 I C 474=12 E S 107=

A I R. 1939 Sind 209

—Ss. 276, Proviso 2 and 315—Applicability and scope—List of persons summoned as jurors and present

and present have been exhausted by the chances of lot and challenge Ss. 276 and 279 do not contemplate that a deficiency shall be recognized and then obviated by the summoning of fresh jurors, so that the jury can be summoned and chosen in three instalments. It is the actual presence of the potential juror in the Court at the time the deficiency

e special jury list was not present
ing of a jury in a
e or more mem-
of Ss 276 and
In a Sessions
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sdition, 30 per-

sions were called in the first instance from the special

directed the clerk in accordance with the rules framed by the Judicial Commissioner's Court to issue fresh sum-

being wanted the clerk issued summons to four persons. Out of these only two appeared, of these two one was chosen by lot.

Held, that there were irregularities in empanelling the jury and the jury was not properly constituted and the trial was vitiated thereby. There was an irregularity when *M* was chosen as a juror because he was not chosen by lot or from persons summoned before def-

—S. 276, Provisos 3 and 4—"Chosen"—Meaning of.

In the absence of words to the contrary in the context, the word "chosen" in Proviso 3 and also in Proviso 4 to S. 276 must mean chosen by lot as in the substantive part of the section (*Davis J C and Lobo, J.*) *SHEWARAM v. EMPEROR* 184 I C 474=12 E S 107= A I R. 1939 Sind 209.

—S. 276, Proviso 3 (b)—Judicial Commis-

CR. P. CODE (1898), S 279.

CR. P. CODE (1898), S 297.

Commissioner's Court exercising its original jurisdiction. Proviso 3 to S 276, so far as the Commissioner's Court is concerned, refers to the exercise of its original criminal jurisdiction. S. 276 in S. 266 must be read as referring to the section itself and not to the provisos (*Datta, J C and Lobo, J*) SHEWARANI v. EMPEROR.

184 I.O. 474 = 12 R.S. 107 =

A.I.R. 1939 Sind 209

S 279—Scope—Deficiency in Jury—Procedure for making up. See CR. P. CODE, SS 276 PROVISOS 2, 279 AND 315. A.I.R. 1939 Sind 209

S 282 (2)—Scope of.

Sub-S. (2) to S 282 contemplates the addition of a juror after the trial of the case has begun and not before. S 282 is limited to cases where a jury has properly empanelled at the outset and one or more of the casualties which are bound to occur amongst human lives, has in fact occurred (*Datta, J. Lobo, J*) SHEWARANI v. EMPEROR.

184 I.O. 474 = 12 R.S. 107 = A.I.R. 1939 Sind 209

S 288—Admission of approver's statement in committing Court—Different statement in Court of Session—Powers of Sessions Judge—Reliance on earlier statement.

It is competent to a Sessions Judge to admit in evidence the statement made by the approver in the Court of the committing Magistrate and to treat it as evidence. It is also open to him under the provisions of law to hold that the statement made by the approver before the Magistrate was a correct statement and that it should be relied upon in spite of the different statement introduced by him in the Court of Session (*Rachpal Singh, J.*) BHOLA NATH v. EMPEROR.

184 I.O. 191 = 40 Cr.L.J. 856 = 12 R.A. 189 =

1939 A Cr.O. 98 = 1939 A.L.J. 785 =

1939 A.W.R. (H.C.) 461 = A.I.R. 1939 All 567.

S. 288—Evidence given by witness before committing Magistrate—Use of as substantive evidence in Sessions Court—Conditions—Corroboration—Necessity.

The deposition of a witness given in the Magistrate's Court may be used as substantive evidence in the

did not necessitate a trial *de novo*, and that the proper course for the Judge was simply to ignore the opinion of the assessor if he came to the conclusion it was improperly expressed, or that he had been improperly influenced by extra judicial considerations (*Young, C. J. and Blacker, J.*) EMPEROR v. PAHLU.

I.L.R. (1939) Lab 243 = 184 I.O. 549 =

12 R.L. 234 = 41 P.L.R. 731 =

A.I.R. 1939 Lab 475.

S 297—Charge to jury—Duty of Judge—

charging the jury being influenced ch shows or tends to show that the accused is of bad character (*Henderson and Sen, J.*) MOSELADDI v. EMPEROR.

184 I.O. 206 = 40 Cr.L.J. 877 = 12 R.C. 212 (2) =

A.I.R. 1939 Cal 497.

S 297—Charge to jury—Failure to point out to jury that deceased had not been cross examined—Effect.

Failure of Judge to point out to the jury that the deceased had not been cross examined cannot have much effect as the jury knew perfectly well that the deceased had not been cross examined and after they have spent several days in hearing the case, they know what cross examination is and the purpose it serves. (*Henderson and Sen, J.*) MOSELADDI v. EMPEROR.

184 I.O. 206 = 40 Cr.L.J. 877 = 12 R.C. 212 (2) =

A.I.R. 1939 Cal 497.

SS 297 and 298—Duty of Judge—Charge under S. 366-A—Age of girl—Proof of girl being below eight—Necessity—Duty of Judge to emphasise in charge to jury. See PENAL CODE, S. 366-A.

1939 P.W.N. 598.

S 297—Misdirection—Burden of proof of innocence laid on accused—Effect on conviction.

While the prosecution must prove the guilt of the

the jury, the accused are bound to be misdirections and the verdict of the jury should not be allowed to stand. (*Lobo, J.*) SHEWARANI v. EMPEROR.

184 I.O. 191 = 12 R.S. 107 = A.I.R. 1939 Sind 209.

S 297—Misdirection—Failure to distinguish

the charge to the jury has not in the cases of each of the two and whose cases are widely difference on the admissibility of evidence, it amounts to a misdirection. (*Datta, J. C.*

return verdict contrary to

The use of the expression

Code, clearly indicates that

ture was that the jury was

of the Judge, whether they agreed with that view or not

CR. P. CODE (1898), S. 297,

and Lobo, J.) SHEWARAM v. EMPEROR.

184 I C 474 = 12 E S 107 = A I R. 1939 Sind 209

— S. 297—*Misdirection—Judge directing that accused has to prove innocence—Effect of.*

Where a Judge in his charge to the jury says that it is the duty of the accused to prove this fact or that, to satisfy the jury on this point or that and leads the jury to believe that the duty of the prosecution and the duty of the defence so far as the "burden of proof" of their respective cases is concerned, is upon the same footing, so that as the prosecution must prove their case, so the accused must prove theirs, it amounts to a misdirection (Datta, J. C. and Lobo, J.) SHEWARAM v. EMPEROR

184 I C 474 = 12 E S 107 = A I R. 1939 Sind 209

— S. 297—*Misdirection—Judge exhorting to jury that whole city and commercial world is watching their verdict—Profruity of.*

Where a Judge in his charge to the jury exhorts the jury as follows: "The whole of Karachi is watching you. The whole commercial world is watching you" it amounts to introducing into the case extraneous consideration and amounts to a clear direction to the jury to

allows in the charge of a Judge to jury (Datta, J. C., and Lobo, J.) SHEWARAM v. EMPEROR

184 I C 474 = 12 E S 107 = A I R. 1939 Sind 209

— S. 297—*Misdirection—Omission to caution jury*

the girl being of loose morals (Harries, C. J. and Meredith, J.) SACHINDER RAI v. EMPEROR.

18 Pat 698 = 184 I C 354 = 6 B E 41 =

12 R P 238 = (1939) P W N 598 =

1939 Pat 536 =

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this, it is an important non-direction to the jury or an

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amounts to misdirection. But S 297 must be read with

S 537, C P Code, and if the omission to read and

explain the relevant sections has not been such as to

occasion a failure of justice, the High Court will not

interfere with the verdict of the jury on that ground

alone. (Vadia and Kania, JJ.) BHINA SOMA v.

EMPEROR.

41 Bom LR 965 =

A I R. 1939 Bom. 457.

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JJ) CYRIL BERTRAM PLL

I L R (1939)

Y. D. 1939—28

CR. P. CODE (1898), S. 309.

12 E C 251 = 43 C W N. 133 = A I R. 1939 Cal. 682.

— Ss 297 and 298—*Non direction—Charge of sexual offence—Duty of Judge to warn jury of danger of conviction on uncorroborated evidence of girl—Failure to draw attention of jury to improbability of abduction in case of immoral girl—Effect*

In the class of cases, commonly referred as sexual cases, e.g., charges falling under Ss 366, 366-A, 376 etc. it is essential that the Judge in his charge to the jury specially warn the jury of the danger of convicting upon the uncorroborated testimony of the woman or girl concerned. It is true that there is no rule requiring corroboration, but it is extremely dangerous in this class of cases to act solely on the woman's evidence. When the evidence of the woman concerned is a mass of contradictions such a case is eminently one in which the jury should be warned most emphatically. When the Judge gives no warning of any kind to the jury and does not deal with the question of corroboration, and when further the Judge does not tell the jury that if the girl was immoral or of loose character, it would make the story of abduction and that less probable, such failure amounts to

the girl being of loose morals (Harries, C. J. and Meredith, J.) SACHINDER RAI v. EMPEROR.

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JJ) CYRIL BERTRAM PLL

I L R (1939)

Y. D. 1939—28

CR P CODE (1898), S 310

his refusal to prescribe the punishments under Ss 304 Part (1) and 324, I P Code, is illegal (*Almond, J C and Mir Ahmad*) 182 I O 572=

—S 310—*Chkr**Proper evidences—Necessity for*

Before an accused can be questioned about previous convictions, there must be evidence legally admissible upon the record which shows that he has committed these previous offences about which he is examined by the Court, and legally admissible evidence as to previous convictions must fall either within S 511, Cr P Code or S 54 Evidence Act (*Davis, J C and Lobo, J*) GHOUSE BAKSH v EMPEROR.

I L R (1939) Kar, 677=183 I O 219= 40 Cr L J 770=12 R S 49=A I R 1939 Sind 203.

—S 310—*Procedure—Recital of previous convictions—Proper course*

In a case where it is intended to prove previous convictions for the purpose of enhanced punishment that is in effect divided into two parts firstly for the subsequent offence and the opinion assessors thereon and secondly, if the accused is convicted of that subsequent offence there is what is to a trial on the charge of previous conviction account of which the accused is liable to receive enhanced punishment. The second part of the trial may be very short but it is nevertheless to be something and not a mere formality.

accused relating to the previous convictions and the subsequent offence is treated as a whole and read out at one time to the accused this procedure is clearly contrary to the provisions of S 310 Cr P Code and though it is true that under S 221 (7) Cr P Code the charge must contain details of the previous convictions which it is intended to prove for the purpose of enhanced punishment, that section must be read subject to S 310 Cr P Code, and the accused must not be prejudiced in his trial for the subsequent offence by a recital of his previous convictions (*Davis, J C and Lobo, J*) GHOUSE BAKSH v EMPEROR

I L R (1939) Kar 677=1 40 Cr L J 770=12 R S 49=A I R 1

—S 310—*Scope—Accused being member of criminal tribe—Evidence as to—When to be given—First information referring to a accused as member of criminal tribe read out to jury before verdict—Evidence let in to prove that accused was entered in criminal tribes register—Effect of*

The fact that an accused is a registered member of a criminal tribe under the Criminal Tribes Act is like a previous conviction a matter from which bad character can be inferred and which may affect the sentence. It should be treated in the same way as a previous conviction, and should not be divulged to the jury until after their verdict lest their minds should be prejudiced. The accused must have the full protection which is enacted in S 310, Cr P Code and S Evidence Act, is intended to provide. When

CR P CODE (1898), S 312.

DONE v EMPEROR 183 I O 660= 5 B R 978=1939 P W N 627=12 R P 177= (2)=20 P L T 879 Choosing of jury— See CR P CODE,

A I R 1939 Sind 209 —S 337—*Tender of pardon—Facts to be taken note of by Magistrate*

All that an officer who can grant pardon under S 337 of the Cr P Code has to see is whether on the information at his disposal there is a *prima facie* case against the person to whom the pardon is going to be tendered for an offence which is exclusively triable by a Court of Session. If that is so he is competent to grant a pardon. No searching inquiry is called forth in this matter at that stage. As soon as a Magistrate is informed that the offence is one which according to the investigating authority is exclusively triable by the Court of session then his duty is to record the statement

essential or by with the conditions. Further an enquiry is to whether he is absolutely necessary according to law. (*Abdul Qayyum C J and Wazir, J*) STATE v SHARAF DIN 41 P L R J & K 53

—S 339 A—*Applicability—Approver stating that his statement as approver was completely false*

S 339 A only applies to a case in which the approver's case is still that he was one of the persons who had committed the offence but that the Public Prosecutor was in error in considering that he had in any way failed to comply with any of the conditions upon which the tender of pardon was made. It does not apply to a case in which the approver has completely changed his story.

11 R L 899=40 Cr L J 614=41 P L R 290= A I R 1939 Lah 66

—S 339 A—*Scope of—Failure to comply with requirements of section—Effect*

Under S 339 A it is imperative on the Court of Session to ask the accused whether he pleads compliance with the conditions on which the tender of pardon was made and to record his plea and then proceed with the trial. The trial for the offence in respect of which the pardon was granted could not begin until the requirements of the section were carried out *in limine* and a judgment of

—S 312—*Examination of accused—Duty of Magistrate*

The examination of the accused after the prosecution evidence has been completed is absolutely essential

examine a police clerk to prove that the accused was entered in the criminal tribes register the procedure is open to grave objection (*Rowland, J*) MOSAHER

CR. P. CODE (1898), S. 342.

according to the mandatory provision of law contained in S. 342, Cr. P. Code, and cannot be dispensed with. (*Ahul Qayom, C. J. and Wazir, J.*) *STATE v. SHIB RAM* 41 P.L.R. J & K 95

—S 342—Scope—Compliance—Opportunity to accused to explain matters appearing in the evidence—How to be given

Where, in a murder trial, the Sessions Judge reads out nearly two pages of printed matter, being the précis of the evidence against the accused as it were in one breath, and asks the accused whether he wants to say anything, that is certainly not giving a real opportunity to the accused to explain the matters appearing in the evidence against him, as required by S. 342 of the Cr. P. Code, though it might be said that the letter of the law is observed. (*Pandurang Row, J.*) *KANAKASABAI PILLAI v. EMPEROR.* 50 L.W. 452=

1939 M.W.N. 883.

—S 345 (1)—Compromise—Effect of—Duty of Magistrate—Right of complainant to reside and proceed with case—Jurisdiction of Magistrate after composition.

A composition of an offence when arrived at between the parties is in law complete as soon as it is made, and it has the effect of acquittal ever parties later on resides from the filing of a compromise petition in Court in respect of an offence the Court is required to order an acquittal to proceed further with by a subsequent with before any order is proceeded with. (*M. SINGH v. EMPEROR.* 1939 P.W.N. 69=

19 Pat.L

—S 345 (2)—D

Effect of acceptance by cord to Superintendent of Police to ascertain latter's opinion—Propriety—Proper course for ascertaining views of Crown.

In the case of an offence compoundable with the permission of the Court, if the Magistrate not expressly, accepts a compromise parties the accused is entitled to Magistrate cannot proceed with the that the complainant has resided from. Nor is it right or proper for the Ma, record of the proceedings, which character, to the Superintendent of opinion on a compromise effected proper course is to ask the prosecutor his instructions from the District Magistrate, or may be from the Superintendent of Police, as to the attitude of the Crown towards the compromise. (*Masohar Lall, J.*) *DHARICHHAN SINGH v. EMPEROR.* 180 I.C. 627=

1939 P.W.N. 69=11 R.P. 525=40

19 Pat.L.T. 840=A.I.R. 1

—S 345 (5 A)—Discretion of High Court for compromise not made before lower Court

The High Court has, no doubt, jurisdiction under S. 345 (5 A), Cr. P. Code to allow the parties to compromise their disputes, although the before the Courts below to the compromise should be made. But ferred by the section upon the High exercised sparingly and only in suits the proceedings before the Courts irregularity or impropriety, the ex ferred by the section should not except in a case in which the recor

CR. P. CODE (1898), S. 362.

parties made some attempt to compromise their differences while the matter was still before the trial Court and before that Court passed final orders in the case. (*Edgley, J.*) *BABUR ALI SARDAR v. KALA CHAND BEPARI* I.L.R. (1939) 1 Cal 567=

A.I.R. 1939 Cal 728.

—S 345 (5 A)—Powers of High Court—Aggrieved persons not before it.

S. 345 (5 A), Cr. P. Code, merely confers jurisdiction on the High Court in the exercise of its powers of revision under S. 439, Cr. P. Code, to allow the aggrieved persons mentioned in Col. 3 of the tables attached to sub-Ss (1) and (2) to compound the various offences mentioned in those sub sections. It would not, therefore, be competent for the High Court to allow a compromise to be recorded, unless the aggrieved persons are actually at it and have expressly recorded their consent to such a compromise being recorded. (*Edgley, J.*) *BABUR ALI SARDAR v. KALA CHAND BEPARI.*

I.L.R. (1939) 1 Cal 567=A.I.R. 1939 Cal 728.

—S 347—Concurrent jurisdiction—Commitment to Court of Session—When justified—Statement of reasons—Necessity.

Of the Magistrate can try he should do so. The discretion exercised after due or it must be stated ason is it possible to that he can try the commit to sessions.

ceeding Magistrate delivering judgment written by his predecessor without adopting it as his own—Irregularity, if curable

Under S. 350 It is quite possible that the succeeding Magistrate may take the judgment left by his predecessor.

curable under S. 537. It is not contemplated in the Code that a Magistrate shall deliver any judgment other than his own and if he does so it is not an irregularity. (*MAUNG MYA THI.* 70=183 I.C. 216= 10 C.L.W. 829=12 R.R. 69= A.I.R. 1939 Rang 249.

—S. 362—Mode of recording evidence.

When the Magistrate is not present, the Court may record the evidence in the presence of the parties, and the Magistrate may sign the judgment and the order of the Court.

OR P CODE (1898), S. 310.

his refusal to prescribe the punishments under Ss 304 Part (1) and 324, I P. Code, is illegal (*Atmoni, J C and Mr Akmad f*) MIAN GUL v EMPEROR
182 IC 572=40 Cr L J 686=12 R Pesh 5=

A I R 1939 Pesh 23
—S 310—Charge based on previous conviction—
Proper evidences—Necessity for

Before an accused can be questioned about previous convictions, there must be evidence legally admissible upon the record which shows that he has committed the previous offences about which he is examined by the Court and legally admissible evidence as to previous convictions must fall either within S 511, Cr P Code or S 54 Evidence Act (*Datt, J. C and Lobo f*) GHOUSE BAKSH v EMPEROR

ILR (1939) Kar 677=183 IC 219=
40 Cr L J 770=12 R S 49=A I R 1939 Sind 203.
—S 310—Procedure—Recital of previous convictions—Proper course

In a case where it is intended to prove previous convictions for the purpose of enhanced punishment the trial is in effect divided into two parts firstly the trial for the subsequent offence and the opinion of the assessors thereon and secondly, if the accused be convicted of that subsequent offence there is what amounts to a trial on the charge of previous convictions on account of which the punishment may be very short but something apart and trial in the sense that it shall not be allowed to influence the assessors or jurors in their opinion as to the guilt of the accused of the subsequent offence for which the accused is at first to be tried. If the statement of the accused relating to the previous convictions and the subsequent offence is treated as a whole and read out at one time to the accused this procedure is clearly contrary

to S 310 Cr P Code and to the provisions of the

GHOUSE BAKSH v EMPEROR

ILR (1939) Kar 677=183 IC 219=
40 Cr L J 770=12 R S 49=A I R 1939 Sind 203

—S 310—Scope—Accused being member of criminal tribe—Evidence as to—When to be given—First information referring to accused as member of criminal tribe read out to jury before verdict—Evidence let in to prove that accused was entered in criminal tribes register—Effect of

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OR P CODE (1898), S 342

DOMESTIC EMPEROR 183 IC 660=
5 R R 978=1939 P W N 627=12 R P 177=
40 Cr L J 833 (2)=20 P L T 879
—S 315 (2)—Applicability—Choosing of jury—
Procedure of making deficiency See CR P CODE,
Ss 276 PROVISIO 2, 278 AND 315

A I R 1939 Sind 209
—S 337—Tender of pardon—Facts to be taken
note of by Magistrate

All that an officer who can grant pardon under S 337 of the Cr P Code has to see is whether on the information at his disposal there is a *prima facie* case against the person to whom the pardon is going to be tendered for an offence which is exclusively triable by a Court of Session. If that is so he is competent to grant a pardon. No searching inquiry is called forth in this matter at that stage. As soon as a Magistrate is informed that the offence is one which according to the investigating authority is exclusively triable by the Court of session then his duty is to record the statement after granting pardon to the person put before him (*Rachpal Singh, f*) BHOLA NATH v EMPEROR

181 IC 191=40 Cr L J 856=12 R A 189=
1939 A W E (H C) 464=1939 A Cr C 98=
1939 A L J 785=A I R 1939 All 567.
—S 339—Trial of approver—Certificate by

giving false evidence, has not complied with the condition on which the tender was made. Further an enquiry in the presence of the approver as to whether he had forfeited the pardon tendered to him is absolutely necessary according to law, (*Abdul Qayoom C J and Wazir, f*) STATE v SHARAF DIN

41 P L E J & K 53
S 339 A—Scope—Failure to comply with requirements of section—Effect

the case of an approver who has stated that his statement as an approver was completely false (*Young C J and Blacker, f*) GURDIT SINGH v EMPEROR

ILR (1939) Lah 216=181 IC 924=
11 R L 899=40 Cr L J 614=41 P L R 290=
A I R 1939 Lah 66

—S 339 A—Scope of—Failure to comply with requirements of section—Effect

Under S 339 A it is imperative on the Court of Session to ask the accused whether he pleads compliance with the conditions on which the tender of pardon was made

Magistrate

The examination of the accused after the prosecution evidence has been completed is absolutely essential

CR. P. CODE (1898), S. 342.

according to the mandatory provision of law contained in S. 342, Cr. P. Code, and cannot be dispensed with. (*Asif Qayyum, C. J. and Wazir, J.*) STATE v SHIB RAM 41 P.L.R. J & K 95

—S. 342—Scope—Compliance—Opportunity to accused to explain matters appearing in the evidence—How to be given

Where, in a murder trial, the Sessions Judge reads out nearly two pages of printed matter, being the precis of the evidence against the accused as it were in one breath, and asks the accused whether he wants to say anything, that is certainly not an opportunity to the accused to explain evidence against him, as

P. Code, though it might be observed. (*Pandra*, PILLAI v EMPEROR.

—S. 345 (1)—Compromise—Effect of—Duty of Magistrate—Right of complainant to refile and proceed with case—Jurisdiction of Magistrate after composition.

A composition of an offence when arrived at between the parties is in law complete as soon as it is made, and it has the effect of a parties later on resiles filing of a compromise in Court in respect of the Court is required, order an acquittal

to proceed further with case, by a subsequent withdrawal of before any order is passed on it proceeded with (*Manohar Lal SINGH v EMPEROR*

1939 P.W.N. 69=11 R.P. 525=40 Cr.L.J. 460=19 Pat.L.T. 840=A.I.R. 1939 Pat. 141.

—S. 345 (2)—Duty of Court—Compromise—Effect of acceptance by Court—Magistrate sending record to Superintendent of Police to ascertain latter's opinion—Propriety—Proper course for ascertaining views of Crown.

1939 P.W.N. 69=11 R.P. 525=40 Cr.L.J. 460=19 Pat.L.T. 840=A.I.R. 1939 Pat. 141.

—S. 345 (5 A)—Discretion of High Court—Proposal for compromise not made before lower Court

The High Court has, no doubt, jurisdiction under S. 345 (5 A), Cr. P. Code to allow the parties to compromise their disputes, although there was no proposal before the Courts below to the effect that any such compromise should be made. But the discretion conferred by the section upon the High Court should be exercised sparingly and only in suitable cases. Where the proceedings before the Courts below disclose no irregularity or impropriety, the exceptional power conferred by the section should not ordinarily be used except in a case in which the record indicates that the

CR. P. CODE (1898), S. 362.

parties made some attempt to compromise their differences while the matter was still before the trial Court and before that Court passed final orders in the case. (*Edgley, J.*) BABUR ALI SARDAR v. KALA CHAND BEPARI. I.L.R. (1939) 1 Cal 567=A.I.R. 1939 Cal 728.

—S. 345 (5-A)—Powers of High Court—Aggrieved persons not before it.

S. 345 (5 A), Cr. P. Code, merely confers jurisdiction on the High Court in the exercise of its powers of revision under S. 439, Cr. P. Code, to allow the aggrieved

ALI SARDAR v KALA CHAND BEPARI.

I.L.R. (1939) 1 Cal 567=A.I.R. 1939 Cal 728.

—S. 347—Concurrent jurisdiction—Commitment to Court of Session—When justified—Statement of reasons—Necessity.

Consideration and the reasons for it must be stated ason is it possible to that he can try the commit to sessions.

EMPEROR.

181 I.C. 260=12 R.O. 87=1939 A.C.C. 177=40 Cr.L.J. 903=1939 A.W.R. (C.C.) 188=1939 O.L.R. 596=1939 O.A. 729=1939 O.W.N. 868.

—Ss. 350 and 537—Delivery of judgment—Succeeding Magistrate delivering judgment written by his predecessor without adopting it as his own—Irregularity, if curable

Under s. 350 it is not possible that the succeeding

in the form of delivery, it is not delivering judgment at all, (*Spargo, J.*) CHINNAYAR v MAUNG MYA THI.

1939 Rang.L.R. 570=183 I.C. 216=40 Cr.L.J. 829=12 R.R. 69=A.I.R. 1939 Rang. 249

—S. 362—Mode of recording evidence.

What the appellate Court requires is not merely the opinion of the Magistrate recording the evidence given by the witnesses in cases from which appeal lies but a correct record of the evidence given by the witnesses: it is for the appellate Court to decide whether the evidence corroborates or contradicts the other which be done only if the evidence is Where recording the evidence in chief cases, Presidency Magistrate while appeals

CR. P. CODE (1898), S 367.

sentence merely recorded the words "corroborates P. W. 1" and convicted the accused

Held, that the Magistrate had failed to record the evidence of the witnesses in accordance with the provisions of S 362 and hence the conviction could not be upheld. (*Henderson and Set, JJ*) GHULAM DASTGIR KHAN v. EMPEROR. 184 I.C. 581=

12 R.O. 244= A I.

—S 367—Contents of judgment

It is not necessary for a judgment thing recorded in the evidence, when the evidence is read. The judgment sufficient of the evidence as is necessary to ascertain the facts deposed to, and the importance of and the value to be attached to the evidence of the witnesses, and the reasoning based on this evidence on which Judge founds his decision and his sentence; to put more than this into a judgment is merely to confuse. (*Mya Bu and Mosty, JJ*) NGA THAN v. THE KING.

184 I.C. 78=12 R.R. 123=40 Cr L.J. 871=

A I.R. 1939 Rang 263

—Ss 367 and 424—Judgment—Contents—Duty of appellate Courts

It would be well for District Magistrates who hear appeals in criminal cases to bear in mind that they are also subordinate to higher Courts and it is their duty to satisfy the higher Courts by their judgments that they have applied their minds to the case. When recording a finding of conviction produced, they have arrived at a cor discharge this duty, their judgment requirements laid down by the law merely to say that all the points arising been considered by the Court below rightly decided. Under the law it is clearly the duty of the appellate Court to state the various points urged before it and to record its decision thereon with its reasons for those decisions. (*Mulla J*) BANSIDHAR v. EMPEROR. 1939 A.L.J. 671=

1939 A.W.R. (H.C.) 567=1939 A.C.R. 141.

—Ss 367 and 424—Judgment—Duty of appellate Court—Conformity to provisions of Cr. P. Code—Necessity

Appellate Courts should take care to write judgments

(*Attorp, J*) RAM SINGH v. EMPEROR.

1939 A.W.R. (H.C.) 836.

—S 367—Judgment—Requirements—Compliance with—Necessity.

So long as the law requires a judgment in a particular form the Magistrate must endeavour to comply with it. (*Norman, J.C.S.*) GOPI v. EMPEROR.

1939 A.M.L.J. 45

—S 389—Construction.

Section 369, Cr. P. Code must be read with S 430 of the Code. (*Mosty, J.*) THE KING v. NGA BA SAING. A I.R. 1939 Rang 392

—S 386 (1) (a)—Recovery of fine imposed upon a coparcener—Moveables of the coparcenary body, if can be sold

owned by the coparcenary body offender. It is the property in which the offender has only and so such property cannot

CR. P. CODE (1898), S 397.

the fine. (*Rachpal Singh, J.*) BANSRAJ DAS v. SECRETARY OF STATE. 183 I.C. 134=12 E.A. 93= 1939 A.W.R. (H.C.) 247=1939 A.C.R. 46=

A I.R. 1939 All. 373

—S 386 (1) (b), proviso—Recording of special reasons—Duty of Magistrate—Warrant issued while prisoner undergoing imprisonment in default of fine—

has been undergone, although the property seized in execution of that warrant is sold after the prisoner has served his full period of imprisonment. (*Edgley and Lodge, JJ*)

12 R.O.

—S 386 (2)—Disposal of claims made by third party—Procedure in Bengal—Circular orders (Criminal), R. 117 (4)

There is of course no necessity for a Magistrate in Bengal to follow the procedure laid down in O. 21, R. 58, C. P. Code, in the determination of claims made by third parties to properties seized in execution of distress warrants. But he is not entitled to utilise the

—S 393—Cumulative sentence of imprisonment for more than five years—Maintainability when accused is sentenced to whipping

The cumulative sentence of imprisonment of more than five years cannot be maintained in the case of a person who has been ordered to undergo punishment of whipping and vice versa. (*Almond, J.C. and Mir Ahmad, J.*) KARIM SHAH v. EMPEROR.

182 I.C. 530=12 E. Pesh. 2=40 Cr L.J. 681=

A I.R. 1939 Pesh 17.

—S 397—Applicability and construction—'imprisonment'—Meaning of—Imprisonment—Order for concurrent running

with substantive sentence of imprisonment in subsequent case—Legality of

The words 'sentence of imprisonment' in S. 397, Cr. P. Code, are not restricted to mean a sentence of substantive imprisonment but include imprisonment in default of payment of a fine. Imprisonment in default of payment of fine is a sentence of imprisonment. Imprisonment in default of payment of a fine cannot be made concurrent with a substantive sentence of imprisonment. It makes no difference in this respect whether the sentence of imprisonment in default of payment of fine and the substantive sentence of imprisonment are passed in the same case or whether it is a case in which an accused person is undergoing a sentence of imprisonment in default of payment of fine in one case

is under-
fine, any
to him
sentence
as sentenced to
imprisonment
under S. 379

CR. P. CODE (1898), S. 403.

I. P. Code. He was unable to pay the fine and went to jail. While undergoing such imprisonment he was sentenced by another Court to rigorous imprisonment for two months under the Bombay Abkari Act, and also to rigorous imprisonment for two months under S. 224, I. P. Code. The convicting Court directed that the sentence under the Abkari Act should run concurrently with the imprisonment which the accused was then undergoing in default of payment of fine in the first case.

Held (on a reference by the District Magistrate), that S. 397, Cr. P. Code, applied to the case, that the substantive sentence awarded under the Abkari Act should begin after the expiry of the sentence of imprisonment in default which the accused was then undergoing, and should then be succeeded by the substantive sentence of imprisonment passed under S. 224, I. P. Code, and that the direction for concurrent running was illegal. (*Broomfield and Maclean, J.J.*) EMPEROR v. PUNJABI LALAJI. I.L.R. (1939) Bom 160 = 181 I.C. 979 = 11 R.B. 374 = 40 Cr.L.J. 602 = 41 Bom L.R. 277 = A.I.R. 1939 Bom 174.

—S. 403—Applicability—"Judgment"—Order dismissing complaint or discharging accused—Effect of. The word "judgment" indicates some final determination of the case which would end it once for all such as an order of conviction or acquittal. Hence an order

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40 Cr.L.J. 745 = A.I.R. 1939 Sind 193 (F.B.)

—S. 403—Scope—Conviction under S. 75 Madras City Police Act—If bars trial under Ss. 323 and 352, I. P. Code.

The conviction of a person under S. 75 of the Madras City Police Act is no bar to his trial for an offence under Ss. 323 and 352, I. P. Code. (*J.*) THANANIMAL v. ALAMELU. I.L.R. (1939) Mad 100 = 50 L.W. 800 (1) = 11 R.B. 374 = 40 Cr.L.J. 745 = A.I.R. 1939 Mad 100.

—Ss. 403 and 407—Scope and effect of—Complaint dismissed under S. 203 or accused discharged under S. 259—Second complaint—If can be inquired into.

S. 437 is only an enabling section and does not take away by implication the jurisdiction vested in a Magistrate to hear the complaint again. Where therefore a Magistrate dismisses a complaint for default under S. 203 or discharges an accused under S. 259, it is competent for that Magistrate or his successor in office or

entertaining the second complaint should however keep

MST. HARBAL v. RAYA PREMI

183 I.C. 283 = 12 R.B. 44 = 40 Cr.L.J. 745 = A.I.R. 1939 Sind 193 (F.B.)

—S. 415—Applicability—Aggregate sentences of fine not exceeding Rs. 50

The combination of punishments which is contemplated by S. 415, Cr. P. Code, refers to a combination of the punishments of imprisonment and fine. This section can have no application in a case in which two non appealable sentences of fine have been passed and the aggregate amount of fine does not exceed Rs. 50 (*Edgley, J.*) KALI CHARAN SARDAR v. ADHAR

CR. P. CODE (1898), S. 423.

MANDAL. I.L.R. (1939) 1 Cal. 325 = 182 I.C. 258 = 12 R.O. 38 = 40 Cr.L.J. 652 = 43 O.W.N. 360 = A.I.R. 1939 Cal 274

—S. 415—Applicability and construction—"Two or more punishments"—Meaning of—"Two non-appealable sentences of fine not exceeding Rs. 50—Appeal."

ments, must be read as referring to two or more punishments of different kinds. The section is meant to refer to sentences in which two or more different kinds of punishment referred to in Ss. 413 and 414 were combined. (*Burn and Stodart, J.J.*) VENKATARAMA. NAVYA v. EMPEROR. I.L.R. (1939) Mad 1035 = 50 L.W. 614 = 1939 M.W.N. 1039 = (1939) 2 M.L.J. 878.

—Ss. 417 and 423—Appeal against acquittal—Interference—Considerations.

The fact that it was possible that the High Court if it were hearing the case in the first instance, would have taken a different view from the one taken by the trial Magistrate, is however no ground for interfering in appeal with an order of acquittal. The decision of the trial Court is entitled to great weight and the appellate Court should interfere only when it is satisfied that the view of the trial Magistrate was wrong and that it was contrary to the interests of justice. (*P. B. v. P. B.*)

A.I.R. 1939 All 457.
—S. 421—Appellant heard and records called for—Further hearing after arrival of records—If necessary.

All that S. 421, Cr. P. Code, requires is that the appellant be heard and the records called for. If the appellant pleads a reasonable ground for his appeal, such reason being presented to the appeal, it is not necessary to hear the appellant or his pleader again after the arrival of the record in the appellate Court (*Edgley, J.*) AKRAMADIN v. EMPEROR. I.L.R. (1939) 1 Cal. 314 = 183 I.C. 742 = 12 R.O. 179 = 40 Cr.L.J. 839 = A.I.R. 1939 Cal 541.

—S. 422—Appeal from conviction—Parties—Right of complainant to notice and to be heard—Private prosecution—Rule to be followed.

The strict rule is that in an appeal against a conviction only the Crown is entitled to be served with notice, and the appellant is not entitled to be served with notice. The rule which is to be followed in such cases is the discretion of the advocate, but it is not in any case bound to do so. (*Beaumont, J.*) JIABHAI v. BHAG-
11 Bom L.R. 1231
—Power of High award sentence in

appeal or revision

Quære—Whether the High Court under its combined appellate and revisional powers can convert an acquittal (under S. 302/149, I. P. Code) into a conviction (under S. 326/149, I. P. Code) and then pass a sentence where none was passed by the lower Court (*Khara Mohamad Noor and Dhaule, J.J.*) AMBIKA THAKUR v. EMPEROR. 18 Pat 544 = 1939 P.W.N. 747 = A.I.R. 1939 Pat 611.

—S. 423—Powers of an appellate Court—Limits of. See CR. P. CODE, Ss. 233, 236, 237 AND 423.

1939 A.W.R. (H.C.) 661.

CR P CODE (1898), S 423

—S 423—*Re trial—Failure of prosecution—Proper order*

The general rule is that when the prosecution has failed to prove the facts on which the proper order is founded the proper order is not order a retrial. There is no order a retrial would be justified. *RAJENDRA KUMAR v CROWN*

1939 A M L J 60

—S 423 (1) (b)—Order for retrial—Introduction of fresh evidence. *See CR P CODE, S 530*

41 P L R 198

—S 423 (1) (d)—Consequential or incidental order—Order of compensation under S 250—Power of appellate or revisional Court to make. *See CR P CODE, S 439*

A I R 1939 Sind 321

—S 423 (2)—Verdict of jury—Interference—Grounds—Powers of High Court

No Court will interfere with the verdict of a jury even if it may think itself differently of the evidence or because it thinks that another jury may have come to a different conclusion. To lightly interfere with the verdict of a jury with which the Sessions Judge has agreed would be to reduce trial by jury to a farce. *(Wadia and Kania J J) JHINA SOMA v EMPEROR*

41 Bom L R 965—A I R 1939 Bom 457

—S 424—Appellate Court's Judgment—Contents. *See CR P CODE SS 367 & 424—JUDGMENT*

1939 A L J 671

—S 432—Reference on questions of law—Proper course for magistrates

Although the Presidency Magistrates have, under S 432 Cr P Code, the power to refer for the opinion of the High Court any question of law which arises at the hearing of any case pending before them, it is undesirable to make a reference in a case giving a decision on law divorced from the facts. The more desirable course is for the Magistrate to use the second part of S 432, by which he may give judgment in any such case subject to the decision of the High Court on such reference. *By*

Revision—Jurisdiction of High Court

Jurisdiction under S 433 Cr P Code to interfere with this order. *(Davis J C and Tyabji, J) MAUGHAN MAL GIANCHAND v EMPEROR*

A I R 1939 Sind 340

—S 435—Inferior Criminal Court—Magistrate acting under Naik Girls' Protection Act. *See NAIK GIRLS' PROTECTION ACT S 4*

1938 A L J 1147

—S 435—Scope—Proceedings under S 145—Order as to costs—Discretion—Interference by High Court.

CR P CODE (1898), S 437

Where in proceedings under S 145, Cr. P Code the Magistrate disallows costs to the successful party under S 437.

KUNJO v SARJU 5 B R 539—181 I C 176—

11 B P 573—40 Cr L J 538—20 Pat L T 164—

1939 P W N 66—A I R 1939 Pat 206.

—S 436—Discharge under S 494—Interference—Jurisdiction of High Court

The High Court has jurisdiction to interfere, at the instance of the complainant, with an order of discharge passed by a Magistrate upon an application made by the Public Prosecutor under S 494, Cr P Code for withdrawal of the case, where the Magistrate has not properly exercised his discretion. The fact that the Magistrate has not recorded reasons and therefore on materials would be available for interference by the High Court does not affect its jurisdiction. *(Derbyshire C J Bartley and Henderson J J) DEBENDRA KUMAR ROY v SYED YAR BAKHT CHOUDHURY*

I L R 1939 Cal 407—180 I C 384—

11 E O 676—40 Cr L J 349—

43 C W N 301—A I R 1939 Cal 220 (S B)

—S 436—Further inquiry—When may be ordered

A further inquiry can be ordered only on the ground that the judgment of the trial Magistrate was perverse and foolish. *(Mir Ahmad, J) GUL MOHAMMAD v HABIBULLAH KARIM ULLAH*

182 I O 522—

12 B Pesh 1—40 Cr L J 674—

A I R 1939 Pesh 16.

—S 436—Order of discharge—Setting aside of—Practice

—S 436—Order of discharge—Setting aside of—Practice. A trial Magistrate recording all the evidence and finding the accused guilty should not be lightly set aside. *(Abdul Qayom C J and*

STATE

41 P L R J & K 26.

—S 436—Sessions Judge—Interference—Practice

Magistrate, when the view taken by the Magistrate is reasonable in all the circumstances of the case. *(Davis, J and Weston J) AZIZUDDIN v EMPEROR*

I L R 1939 Kar 370—180 I C 581—

11 B S 180—40 Cr L J 454—

A I R 1939 Sind 71.

—S 437—Jurisdiction—Additional Sessions Judge—Power to direct committal

Additional Sessions Judge is competent to exercise powers conferred upon a Sessions Judge by S 437, and can direct a committal, by virtue of the provisions of S 438 (2) of the Code. *(Wadia and Macklin J J) AKBERALLY v ALI MAHOMED*

184 I O 282—

12 B R 159—40 Cr L J 951—41 Bom L R 749—

A I R 1939 Bom 372.

—S 437—Sessions Judge—Duty of—Order of discharge—When to be set aside

The duty of a Sessions Judge under S 437, Cr P Code is to appreciate the evidence from the point of view of the correctness of the Magistrate's order of dis

CR. P. CODE (1898), S. 438.

charge, in other words, to see whether the basis of the

—S. 438—*Appeal dealt with by Sessions Judge—Reference by District Magistrate to High Court for enhancement of sentence—Propriety.*

Ss. 435 and 438 empower a District Magistrate to refer the case to the High Court for record of any proceedings before an appeal. But where appeal has already been dealt with by the Sessions Judge, the District Magistrate is not entitled to refer the case to the High Court under Ss. 435 and 438 for enhancement of sentences passed by the Sessions Judge. The proper course for him is to instruct the law officers of the Crown to file a petition for revision asking for enhancement of the sentences awarded to the accused with the sanction or under the instructions of the Provincial Government. (*Rashid, J.*)

EMPEROR v. RAJA RAM
181 IC 204—12 B L 180 (1)—41 P L R
40 Cr L J 879—A I R 1939 Lat

—S. 438—*Reference under—Powers of High Court to interfere—Magistrate refusing to take action under S. 147, Cr P Code—Powers of High Court to order Magistrate to initiate proceedings.*

The High Court cannot in revision order a Magistrate to initiate proceedings under S. 147, Cr P Code, or under any of the preventive sections of the Code when

order in a reference under S. 438 Cr. P. Code, by the Sessions Judge (*Varma, J.*) B B. BISWAS v. MUCHI RAM MAHATA

6 B E 389—180 IC
11 B P 497—20 P L T 194—40 Cr L J
1939 P W N 21—A I R 1939 Pa

—S. 438—*Reference—When justified*

No reference ought to be made to the High Court less the Judge referring is satisfied that there has been injustice, and the mere fact that the Magistrate has not written a legal judgment does not show that his finding is wrong (*Norman, J.C.S.*)

GOPI v. EMPEROR.
1939 A M L J 45

—S. 439.
Acquittal.
Enhancement.
Discretion of High Court.
Finding of fact.
Miscellaneous proceedings
Order under S. 144
Powers of High Court
Scope.
Time limit

—S. 439—*Acquittal—Revision against—Petition by private party—Interference—Powers of High Court*

It is open to the High Court to set aside an order of acquittal at the instance of a private complainant and no distinction can be made between a petition for revision by a private complainant and a case reported by a

CR. P. CODE (1898), S. 439.

of India have nevertheless held in several cases that the Court should not interfere too freely and

in revision by the complainant, can set aside an acquittal not based on the merits of the case (being one under

—S. 439—*Acquittal—Revision against by private party—Maintainability—Rule*

The High Court is as a rule loath to entertain revision applications by private parties against acquittals. But where there are clear indications that the accused has been defying the law and disobeying the orders of Courts, both Civil and Criminal and been repeatedly creating trouble, and where the circumstances are such that the

A I R. 1939 Pat. 611.

—S. 439—*Discretion of High Court.*

The exercise by the High Court of the revisional jurisdiction is a matter of discretion (*Datta, J.C. and Tyabji, J.*)

EMPEROR v. ABDUL MAH KARIM

A I R. 1939 Sind 335

—S. 439—*Enhancement of sentence—Application by private individual—If entertainable—Practice—Principle.*

It is the practice of the Oudh Chief Court not to entertain applications for enhancement of sentence on behalf of private parties. This is based on the sound principle that Courts should not be allowed to become

—S. 439—*Enhancement of sentence—Jury trial—*

whether the sentence should be enhanced. (*Henderson and Khundkar, J.J.*)

FAZAL ALI v. EMPEROR.

43 C W N. 1032.

—S. 439—*Enhancement of sentence—Murder—Accused sentenced to transportation*

Where in a murder case the Sessions Judge finds the accused guilty of murder but sentences him to transportation for life or for a long term of imprisonment and an appeal from that decision is heard by the High Court a long time afterwards, the High Court even if it confirms the conviction of murder should not open revision proceedings with a view to consider the desirability of enhancing the sentence to one of death since the

OR. P. CODE (1898), S. 439.

—S 439—*Enhancement of sentence—Trial by jury and sentence not one of death—Enhancement of sentence to one of death—Propriety*

An accused when appearing in answer to a rule to show cause why the sentence passed on him should not be enhanced is in the same position as if he were appealing from an order of conviction. When the trial has been by jury and when the sentence is not one of death the accused cannot ask the Court to enter into questions of fact. If the accused had been sentenced to death the High Court can consider whether or not the jury were right in their conclusions on the facts but if the accused have not been condemned to death they cannot

OR. P. CODE (1898), S. 439.

Court cannot under S. 439 read with S. 423 (1) (d) make an order for compensation, even if, upon the judgment and even if cause had been shown, the High Court were of opinion that an order of compensation should be made. (*Davis J. C. and Tyabji, J.*) *EMPEROR v. MAHOMED ALAN.* 184 I O. 595—

A I R 1939 Sind 321.

—S 439—*Power of High Court—Order under S 144—Revision—Interference after it ceases to have force.*

It is open to the High Court in revision, if it thinks that an order ought never to have been made, to set it aside, although before that action can be taken the order may have ceased to be in operation. (*Baumont, and Sen, J.*) *ARDESHER PHIROZSHAW MURZ*, In re 41 Bom L R. 1253

—S 439—*Scope—Order under S 112—Interfer-*

High Court is always very unwilling to interfere in the of orders passed under the preventive Sections of Criminal Procedure Code. These orders are largely of an administrative nature, but these orders though largely of an administrative nature, have a legal basis, and if it is clear that an order under S 112 has no legal basis proceeded upon a usually to the wrong-wide powers conferred on the High Court. (*C. and Weston, J.*)

698=12 B S 31=

I R 1939 Sind 167.

er S. 144, Cr. P. ent its force—Prac-

A I R 1939 Oudh 156

tice.

It is not the usual practice of the High Court to interfere in revision with an order under S 144, Cr. P. Code.

—S 439—*Finding of fact—Concurrent findings in ab initio improbable cases—Setting aside in revision*

—S 439—*Limitation—Application filed beyond 60 days of order—Maintainability.*

acting under Naik Girls' Protection Act—Interference by

Where an order is made *ex parte* under S 144, Cr. P.

compensation under S. 439 in revision—
High Court to pass

An order directing compensation to be consequential or incidental order within S. 423 (1) (d), nor can it be said that in revision the High Court makes an order consequential or incidental to an order of a Magistrate calling upon a complainant to show cause why he should not pay compensation, if it orders compensation to be paid Hence the High

refuses to make a reference under S 438 Cr. P. Code. The fact that the petitioner is a pardanashin lady or her pleader in the mofassil is not aware of the practice of the High Court, can hardly be regarded as among the most exceptional circumstances (*Dhavit, J.*) *BECHAN*

CR. P. CODE (1898), S. 439.

KUER v. MAHARAJA OF CHOTANAGPUR.

179 I C 15 = 11 R P 338 = 5 B.E. 206 =

40 Cr.L.J. 196 = 1939 P.W.N. 862 =

A.I.R. 1939 Pat 320

—S. 439 (6)—*Enhancement of Order of release under S. 562—Resisting order and passing enhancement.*

The enhancement of a sentence passed by a Magistrate is not an enhancement of a sentence to be enhanced. Under S. 562, an accused is released on probation.

CR. P. CODE (1898), S. 449.

—S. 449—*Waiver of claim.*

Per Costello, J.—A European British subject can waive his right to be dealt with as such under the provision of Ch. XXXIII, Cr. P. Code. (*Derbyshire, C.*)

184 I C 614 = 12 R C 251 = 43 C W N 120 = A.I.R. 1939 Cal. 682

—S. 449 (1) (c)—*Application for leave to appeal—Limitation.*

There is some doubt whether an application for leave to appeal under S. 449 (1) (c) Cr. P. Code, is not governed by the provisions of Art. 155 of the Limitation Act read with Art. 150 of that Act. (*Derbyshire, C.*)

184 I C 614 = 12 R C 251 = 43 C W N 120 = A.I.R. 1939 Cal. 682

—S. 449 (1) (c)—*Leave to appeal—Grant of—*

Court can only grant in S. 449 (1) (c) Cr. P. Code, that the case would, if it

idency town, have been Ch. XXXIII. (*Derby-*

J.) CYRIL BERTRAM PLUCKNETT v. EMPEROR I L R (1939) 1 Cal 187 =

184 I C 614 = 12 R C 251 = 43 C W N 120 = A.I.R. 1939 Cal. 682

—S. 449 (1) (c)—*Right to appeal—Foundation of*

—The foundation of a right to obtain the verdict and sentence given at a

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depends primarily and fundamentally the applicant. (*Derbyshire, C.*)

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SECTION 439. WHERE MAGISTRATE RECOMMENDATION FOR ENHANCEMENT OF SENTENCE OF AN ACCUSED IS MADE TO HIGH COURT AFTER THE DECISION OF THE APPEAL FILED BY HIM AGAINST HIS CONVICTION, THE ACCUSED, WHEN SHOW CAUSE AGAINST THE ENHANCEMENT OF SENTENCE, IS ENTITLED TO SHOW CAUSE AGAINST HIS CONVICTION ONLY SHOW CAUSE AGAINST THE ENHANCEMENT OF SENTENCE. THE ORDER OF THE HIGH COURT IN RECOMMENDING THE ENHANCEMENT OF SENTENCE OF AN ACCUSED AGAINST HIS CONVICTION. THE FACT THAT THE ACCUSED'S APPEAL FROM JAIL WAS DISMISSED SUMMARILY DOES NOT MAKE ANY DIFFERENCE. SUCH APPEALS ARE DISMISSED SUMMARILY AFTER CONSIDERATION OF THE GROUNDS OF APPEAL, IN ADDITION TO THE JUDGMENT AND IF NECESSARY, THE EVIDENCE (*Morely, J.*) THE KING v. NGA BA SAING.

A.I.R. 1939 Rang 392.

—S. 443—*Applicability of Ch. XXXIII.*

Per Costello, J.—Chap. XXXIII, Cr. P. Code, was only designed to apply to cases of racial distinction where there is a real clash between a European as defendant and a native as accused. (*Derbyshire, C.*)

184 I C 614 = 12 R C 251 = 43 C W N 120 = A.I.R. 1939 Cal. 682

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—S. 449 (1) (c)—*Leave to appeal—Grant of—*

Court can only grant in S. 449 (1) (c) Cr. P. Code, that the case would, if it

CR P CODE (1898) S 476

CR P CODE (1898), S 476.

of the trying Magistrate Hence, by reason of the words of the section, the request for a transfer of a case to the file of the trying Magistrate before whom the alleged offence is committed, which would otherwise be

—S 476—*Expediency of inquiry—Failure to record express finding—If invalidate complaint*

Although it is necessary that a Court deciding to make a complaint under S 476, Cr P Code, should record a finding that in its opinion it is expedient in the interest of justice that an inquiry should be made the absence from the record of an express finding or a finding in the exact words of the Section will not invalidate the com

of justice—If fatal

A Court which orders a prosecution under S 476 Cr P Code, must properly come to the conclusion that a prosecution is necessary in the interests of justice. Though the absence of such a finding is not necessarily

—S 476—*Order by Civil Court making complaint—Appeal to High Court—If one of civil nature or criminal nature—Madras Criminal Rules of Practice, R 37.*

The jurisdiction that is exercised by a Court in filing a complaint under Ss 195 and 476, Cr P Code is a jurisdiction exercised under the Cr P Code and is there

ht of appeal from an order Code, to the Court to which (Pandurang Row J) RAJU

I L R 1939 Mad 439 =

M W N 243 = 49 L W 330 =

A I R 1939 Mad 472 = (1939) 1 M L J 480

—S 476 and Indian Penal Code S 193—*Perjury—Prosecution for—Advisability—Circumstances to be taken into account—Evidence of the scribe of a will*

of—*Denrability*

the course of his written the will

n for perjury, it at though it was

ordinarily in the interests of justice to bring the offender to book, it had to be seen whether it would ultimately

promote the interests of justice to prosecute the scribe at that stage As the final decision as to the will would

rest with the Civil Court nothing should be done to anticipate or prejudice the result of the civil litigation

that was sure to ensure quite soon (Niyogi J) KEWA

SHANKAR v EMPEROR 1939 N L J 562

—S 476—*Procedure—Complaint under S 211,*

I P Code, D. M. P. S. J.

Magistrate may refuse to take cognizance of an offence upon a complaint duly made to him (Dutt J C)

RADHAKRISHNAN v EMPEROR I L R 1939 Kar 648

180 I C 436 = 11 R S 178 = 40 Cr L J 449 =

A I R 1939 Sind 78

under—*Propriety—Absence*

not be ordered under

reasonable probabi-

J) NATHA MAL v

41 P L R 98

under S 193 I P Code

not rejected by Court—If

under O 6, R 5, C. P.

Code which is rejected by Court but placed on record

can legally be made use of for the purposes of prosecution

under S 193, I P Code (Bhidi, J) BEHARILAL

SUD v EMPEROR 41 P L R 652 =

A I R 1939 Lah 529

—S 476—*Prosecution under S 193 I P Code—*

Revisions—Scope of

In a case where a person is ordered to be prosecuted

under S 193, I P Code in respect of certain statements

source of a suit the

sion can only be

some irregularity

se jurisdiction It

CR. P. CODE (1898), S. 476

CR. P. CODE (1898), S. 488.

41 P.L.R. 652 = A.I.R. 1939 Lah 529

S. 476—*Prosecution under Statement, if should be material in*

Statements which form the subject under S. 193 I. P. Code, need not be material for the decision of the suit (*Bhidi, J.*) BEHARI LAL SUDH EMPEROR. 41 P.L.R. 652 = A.I.R. 1939 Lah 529

S. 476 B—*Appeal—Delay in filing—Charge under S. 211, I. P. Code, without giving opportunity to show cause—Appeal beyond time—Delay—if to be excused.*

A charge was made against a complainant under S. 211, I. P. Code, without giving opportunity to show cause.

appear and answer a charge upon a complaint made by the Magistrate. As soon as he did this he applied for a copy of the order of the Magistrate and by that time his appeal to the High Court was out of time because more than 30 days had elapsed.

Held, that the delay must be condoned (*Datta, J.C.*) RAHMAKISHIN v EMPEROR L.L.E. 1939 Kar 648 = 40 Cr.L.J. 496 = A.I.R. 1939 Sind 80.

Ss 476 B and C—*plaint by Special Judge acting under U.P. Encumbered Estates Act*

Where a Special Judge acting under the U.P. Encumbered Estates Act makes a complaint under S. 476 Cr. P. Code, the complainant must appear and answer the complaint within the time specified in the complaint.

S. 476 B—*Order on appeal directing prosecution—If appealable—Retraction*

TRIBENI SAH. 5 B.R. 203 = 179 I.C. 167 = 11 R.P. 323 = 40 Cr.L.J. 157 = 1938 P.W.N. 904 = A.I.R. 1939 Pat 178

S. 488—*Application by wife—Wife induced to live with husband by subterfuge during his pendency—Liability to restitution.*

The fact that the husband has succeeded by means of a subterfuge in inducing his wife to live with him for a

MOHAMMAD v. MST. ALLAH RAKHI 41 P.L.R. 605 = A.I.R. 1939 Lah 533.

S. 488—*Duty of Court—Application by wife—If*

nature (*Datta, J.C. and Tyabji, J.*) MT. NOORAN v. RASOOL BAKSH 181 I.C. 75 = 11 R.S. 204 = 40 Cr.L.J. 496 = A.I.R. 1939 Sind 80.

S. 488—*"Means"—If includes capacity to earn money.*

The term "sufficient means" is not confined to pecuniary resources only, "means" includes a capacity to earn money and if a man can be shown to be capable of money then he has the "means" to (*Tek Chand, J.*) GANGA DEVI v. 179 I.C. 766 = 11 R.L. 624 = 41 P.L.R. 161 = A.I.R. 1939 Lah 24.

S. 488—*Neglect or refusal to maintain—Husband ill-treating wife and causing her to leave him—Liability to pay maintenance—Reasonable cause for fearing ill treatment again—If justifies refusal by wife to return to husband*

In a claim by a wife for maintenance from a husband, the wife must prove that she is prepared to prove facts show that the husband has been ill-treated and there is ground for believing that if she returns the ill-treatment will continue then the wife is entitled to live apart from her husband and to refuse to return to him. The husband in such a case, being the guilty party, must cause a wife to leave the protection by ill treatment is tantamount to deliberately from the home and the justified in refusing to return to the (*Harries, C.J.*) BHAGIRATHI v. LAKSHMI 5 C.L.T. 24.

S. 488 and 490—*Order for maintenance of—Order ceasing to be enforceable in respect of them—If enforceable in respect of the rest*

Where an order directing a father to pay for the maintenance of his children is made and subsequently if

40 Cr.L.J. 241 = A.I.R. 1939 Rang. 67.

S. 488—*Refusal to maintain—Absence of demand—Neglect to maintain—Request to wife to return to husband's house—If negates neglect*

There is no refusal to maintain when there has been no demand. A husband's action in asking his wife to return to his house, does not acquit him of neglect to maintain her in cases where the wife may have genuine

Mahomedan A Buddhist woman married by a Mahomedan is a "wife" for purposes of S. 488 although the marriage is

CR. P. CODE (1898), S. 488

(Spargo, J.) MAUNG PAHTON v MA SAN,
182 I C 259=12 E R. 1=40 Or L J. 653=
A I R 1939 Rang. 207.

—S 488 (2)—*Jurisdiction to make order for maintenance—If lost by divorce effected pending proceedings by wife*

For an order under S. 488 (2) the proper date to be considered made if relation of jurisdiction

amicably in the same house. It therefore on living separately, refuses to come and live husband along with the other wife, she is justified in doing so and is entitled to claim maintenance (Ba U, J.) MAUNG PAIK v MA OHN SINT

182 I C 671=12 E R. 24=40 Or L J 702=
A T R 1939 Rang 210

CR. P. CODE (1898), S. 489

band allotted to her separate from his second wife. In case of maltreatment or cruelty to her she was entitled to live separate from her husband wherever she liked and receive the amount fixed as maintenance. The husband refused to provide a house for her.

Held, that the condition, in the order that the husband, would provide a house for his wife where she

in the compromise. (Abdul AN SINGH v. MT. GURCHARAN,
1=12 E L 117=41 P L R 527=
L J. 701=A I R 1939 Lah. 209

order against absent party at ad
ex parte order,
instituted under S 488, Cr. P Code,
nature. Therefore, the word ex
(6) is used in the same sense as is
17, C. P. Code. Therefore an

—S 488 (8)—*Jurisdiction—Test—Abandonment of wife*

Cl (8) of S 488, Cr. P Code, does not say that

—S 488 (8)—*Jurisdiction of Magistrate—Opposite party employed within jurisdiction but not having permanent residence therein*

The expression "where he resides or is or where he last resided with his wife" in S 488 (8) is sufficiently wide to confer jurisdiction upon a Presidency Magistrate in a case in which the opposite party works for gain

Tyabji, J.) NURAR v. NURAR
I L R. (1939) Kar 383

—S 488 (3), *Proviso—Scope—Absence of application for maintenance within one year of order—If*

J. J. 1939 Kar 674=183 I C 336=12 E S 51= { order for maintenance is to be cancelled, Of course,

husband who she lived in the house which the husband provided the payment of the allowance awarded. (Nolotey, J.)

CR. P. CODE (1898), S. 489.

Effect on liability to maintain child.

Where a wife and child have obtained order for maintenance in their favour, subsequent decree of Civil Court

A I R. 1939 B: 11

S. 490—Costs

A I R. 1939 Rang 67.

S. 491—Habeas corpus—Issue of writ—Powers of High Court.

The High Court has no longer the power common law writ of *habeas corpus* in any

covered by S. 491, Cr P Code (*Lord*

C.P. MATTHEW & DISTRICT MAGISTRAY

DEUM. I L R. 1939 Mad. 744-41 Bom

40 Cr L J 675-1939 A L J. 836-70 (

182 I C 551-1939 M

50 L W 48-19.9 O W N 602=

1939 O L E 433-1939 P W N 581=

12 R P C 4-20 P L T. 597-1939 A Cr C. 110=

5 B E. 811-1939 A W E. (P C) 141=

45 C. W N. 981-A I R. 1939 P C 213=

(1939) 2 M L J. 406 (P C.)

S. 491—Order of arrest under Sind Encumbered Estates Act—Interference by High Court.

When a manager of an estate orders the arrest of a

CR. P. CODE (1898), S. 498.

e accused fails to
amount can be
at the form used
Ss 496 and 299
bond indicates

clearly the nature of the proceedings and the Court in which the person proceeded against is to appear.
(*Ajijoga, J.*) EMERKOR: KARBALA HUSSAIN

1939 N L J. 537.

effect of—Granting of bail—

Cr P. Code, cannot but be

death or transportation for life and other non-bailable offences, and while in the former case the magistrate's powers for granting bail are restricted, it is not so in the latter class of cases. Persons under 16 years and women and sick accused could be released under the powers

KUNWAR

183 I C 713-12 R O 54=

1939 A Cr C 156-1939 O L R 548=

[1939 A W E (C C) 144-40 Cr L J 841=

1939 O A. 665-1939 O W N 791.

S. 497 (5)—Construction—Order cancelling bail and directing arrest on accused—Power to pass—Accused released on bail—Transfer of case to another Court—Power of latter Court to direct arrest of accused.

Where a Magistrate of a C. of sessions is satisfied as

S. 496—Applicability to proceedings under S. 109—Security proceedings—Bail bond—Forfeiture

Effect—Defect in form, if can affect liability

S. 496, Cr P Code does not merely refer to an accus

B. 498—Granting of bail—Offence under S. 409, I. P. Code—General rule, if can be stated

S. 409, I P. Code, may cover a breach of trust in respect of any amount from a rupee to a lac of rupees

for purposes of bail.
EMERKOR.

1939 A M L J. 35.

Procedure—Notice to report of prosecutor—

CR P CODE (1898), S 498

Legality—Allegation as to tampering of evidence—Duty of prosecution

Before granting bail under S 498, Cr. P Code the Sessions Judge, should, of course, give notice to the prosecution though in special cases *ad interim* bail may be granted. But the prosecutor should appear at the hearing of the application and a Judge should not refuse bail merely on the written report of the prosecutor.

—S 498—Powers of High Court to grant bail

Under S 498, Cr P Code, the High Court has power to release a person on bail in any case, that is to say that the powers in granting bail in non-bailable offences is unrestricted, but that power has to be used judicially and not in an arbitrary manner (*Thomas, C J*) **EMPEROR v RANI ABHAIRAJ KUNWAR**

183 I O 713=12 R O 54=1939 A Cr C 155=

1939 O L R 518=1939 A W R (C C) 144=

40 Cr L J 841=1939 O A 665=1939 O W N 791

—Ss 499 and 514—Bail bond—Condition other than for appearance in Court—Validity

The only condition contemplated by a bail bond taken under the Code is a condition for attendance in Court. A condition that the accused person will not deliver any speech until the disposal of the case under S 124 A I P. Code, against him, cannot be imported into the bail bond and the bond cannot be forfeited under S 514, Cr P Code on breach of that condition (*Edgley, J*) **GYANI MEHER SINGH v EMPEROR**

I L R (1939) 2 Cal 42=43 O W N 639=

A I R 1939 Cal 714

—Ss 499 and 514—Surety bond—Requirements—Bond by surety alone—If valid—Forfeiture of such bond—Proceedings under S 514, if can be taken

Court being mentioned, no Court can legally take any proceeding under S 514, Cr P Code (*Mulla, J*) **BRAHMANAND MISRA v EMPEROR**

184 I O 662=

1939 A W R (H O) 696=1939 A Cr C 164=

1939 A L J 779=A I R 1939 All 682

—S 510—Report of Chemical Examiner—Acceptance without cross examination—Danger

The acceptance of mere written report of the Chemical Examiner as evidence is dangerous. It is dangerous to accept his report without cross examining him to cross examine him (*C J and Blair, J*) **I L R (1939) Lah 2**

—S 514—Bond

feiture—Order without giving opportunity of showing cause—Legality

CR P CODE (1898), S 517.

—S 514—Bond for appearance of accused—Forfeiture—Recording of evidence—If necessary

Where a bond has been executed for appearance merely, it is often unnecessary for the Magistrate to record any evidence at all. The Magistrate knows by his own observation that the accused failed to appear in his Court. The burden of proving the negative that is to say, that the accused absented themselves without reason for their non appearance is not upon the accused and it is for the surety to give an explanation. If the surety used person was unable to attend Court.

KUMARAPPAN v THE KING

A I R 1939 Rang 427.

—S 514—Bond under S 106—Forfeiture for breach—Examination of witnesses in presence of accused

—If necessary

Obiter—In case of bond under S 106 Cr P Code, it is necessary for the Magistrate to record evidence to prove the commission of a fresh breach of the peace and the forfeiture of the bond. Such evidence need not according to the terms of S 514 be taken in the presence of the accused, but when the accused appears and shows cause he must be given an opportunity of cross examining the witnesses upon whose evidence the Magistrate had directed him to show cause why the bond should not be forfeited. The section does not require that before a final order is made the witnesses on whose evidence the forfeiture is held to be established if they have been previously examined in the absence of the accused must again be examined in his presence (*Mosely, J*) **KUMARAPPAN v THE KING**

A I R 1939 Rang 427

—S 514—Forfeiture of bond to keep peace—Time for starting proceedings

There is nothing in S 514 or any other part of the Code which restricts expressly or by necessary implication the power of the Court to take action for realization of the penalty under the bond to keep the peace.

—S 514—Proceedings under—Maintainability—

Bond not mentioning time and place at which accused is to appear. See CR. P CODE Ss 499 AND 514—SURETY BOND

1939 A L J 779

—S 517—Order without hearing parties—Legality

An order for disposal of property under S 517 Cr P Code is validly made by the Magistrate.

id 916

deposited

proceeds

Court—

Power of Court to return them to pensioner on his acquittal

use of property called upon to proper order to such documents as to the person to whom it was is however a

CR. P. CODE (1898), S. 522.

marked exception to the general rule. The person entitled to the possession of the papers is himself and the only person to whom value whatsoever is the pensioner but therefore a pensioner made over to the pension papers for securing a loan, but the grant of a loan was followed by criminal proceedings in which the pension papers were produced by the creditor, and the proceedings ultimately resulted in the acquittal of the pensioner who afterwards applied to the Magistrate to have the papers returned to him.

Held, that the Magistrate was legally competent to return the pension papers to the pensioner. (*Bartley and Henderson, J.J.*) REZA ALI WASHAT v. DWARKA PERSHAD SARAF. 182 I.C. 571 = 12 R.C. 83 = A.I.R. 1939 Cal 158.

—S. 522—Order under —Legality—Unlawful entry into house when locked.

In a case where the complainant himself alleges that the house was locked when the unlawful entry was effected it can by no stretch of language be argued that the offence of criminal trespass was attended by criminal force or show of criminal force or by criminal intimidation. An order under S. 522, Cr. P. Code, in such a case is, therefore, illegal. 40 P.L.R. 923 Diss. from. (*Din Mohamed, J.*) RAM CHAND v. EMPEROR. 183 I.C. 310 = 12 R.L. 111 = 40 Cr.L.J. 781 = 41 P.L.R. 63 = A.I.R. 1939 Lah. 184

—S. 522 (1) and (3)—Restoration of possession—Limitation—Powers of High Court in revision

possession
of S. 522
month for
NIHAL S.

1

A.I.R. 1939 All 662

—S. 523—Complaint of theft—during investigation—Case referred—Order for delivery of article to City of—Proper order

If no offences is made out in respect of an article seized from a person during investigation, and a complaint of theft is referred as one of article must be returned to the person in possession it is seized and not to (*Lakshmina Rao, J.*) SUBBAYYA v. 1933 M.W.N. 793 (2) = A.I.R.

—Ss 523 and 524—Owner of known—Procedure to be followed.

If a Magistrate finds that the person seized by the Police is unknown, he directed by S. 523, Cr. P. Code, the obligatory to issue a proclamation requiring who has a claim to the animal to establish that claim within six months. On the expiry of that period, if no such claim has been established, and the person in whose possession the animal was actually found, is unable to show that it was legally acquired by him, it shall be at the disposal of the Government. (*Bartley and Henderson, J.J.*) MAHOMED YUSUF v. KRISHNA MOHAN BHATTACHARJEE 69 C.L.J. 96

—Applicable
Where
for trans

CR. P. CODE (1898), S. 526

J.C.) RAM DITTA MAL v. EMPEROR
184 I.C. 10 = 12 R. Pesh. 22 = 40 Cr.L.J. 847 = A.I.R. 1939 Pesh. 38.

—S. 526—Convenience and expediency

While it is true that convenience and expediency are factors to be considered in the trial of a case, beyond even those considerations, is the more important consideration that justice should be done. (*Davis, J.C. and Tyabji, J.*) JASHANMAL v. EMPEROR 183 I.C. 619 = 12 R.S. 64 = 40 Cr.L.J. 818 (2) = A.I.R. 1939 Sind 222.

—S. 526—Ground for transfer—Complaint laid by Deputy Commissioner of district.

The mere fact alone that it is the Deputy Commissioner who has laid the complaint does not afford a reasonable ground for apprehension in the mind of any person that he will not receive a fair trial in the district of the Deputy Commissioner. In order to obtain transfer to another district, he must further show that the Subordinate Magistrates in the district in which the case is being tried are in awe of the Deputy Commissioner and look upon him as a person who must on no account be crossed. However, cases of this nature which have been instituted by the Deputy Commissioner or District Magistrate of a district, should not be tried by the Magistrate who is in such immediate touch with the

apprehension could scarcely exist in regard to a Magistrate, and is in no the authority of (*Mackney, J.*)

181 I.C. 315 = 11 R.R. 458 = 40 Cr.L.J. 532 = A.I.R. 1939 Rang 88.

—S. 526—Ground for transfer—Advocate appearing in the case, official superior of brother of the Magistrate—If sufficient ground for transfer.

Where the advocate appearing in the case is the official superior of the Magistrate's brother, it should better be left to the good sense of the Magistrate whether to try the case himself or not, and in a particular case, by reason of his brother's relationship with

CR. P. CODE (1898), S. 526

v EMPEROR 183 IC 195=12 ES 47=
40 Cr L J. 750=A I R 1939 Sind 181
—S 526—High Court's powers of transfer—

transfer of the case nor is there any reasonable ground for apprehension on the part of the applicant that the Magistrate will not deal fairly and honestly in his final order with the questions under the provisions of the Cr. P. Code, before him for his decision, the case cannot be transferred (*Davis, J C*) OM RADHE v. EMPEROR 183 IC 460=12 RS 55=

40 Cr L J 803=A I R 1939 Sind 238

—S 526 (8)—“Party”—Informant under S 107—Status of.

The word ‘party’ within the meaning of S 526 (8) does include an informant under S 107 (*Davis J C*) OM RADHE v. EMPEROR 183 IC 460=12 RS 55=40 Cr L J 803=A I R 1939 Sind 238

—S 526 (8)—Procedure—Magistrate doubtful whether person asking for adjournment is ‘party’—Safe course.

the case which had not been adduced before (*Din Mahomed, J*) RAM PRASHAD v. DHANNA 41 P L R 198=A I R 1939 Lah 513.

CR P. CODE (1898), S 536

1939 A.L.J. 783=1939 A.W.R. (H C.) 710=
A I R 1939 All 693.
—S 530 (q)—Applicability—Summary trial of

A I R 1939 Sind 341

—S 533—Confessional statement not properly recorded—Certificate that confession was voluntary—Magistrate's evidence—Admissibility

Where though the confessional statement is not recorded as required by law, yet is certified by the Magistrate recording it that it was made voluntarily in such a case it is impossible to construe S 533, Cr. P. Code so as to render it inadmissible to give evidence that the statement was duly recorded (x) that the statement was voluntarily made and represents what was said (*Niyogi and Pollock J J*) BALIRAM SINGH v CROWN 184 IC 274=12 R N. 106=

40 Cr L J. 937=1939 N L J 442=
A I R 1939 Nag 295

—S 533—Non-compliance with Ss 164 and 364—When not curable.

In cases where a Magistrate has made no attempt to 164 and 364, Cr. P. an accused person, evidence Where there is a formal en it will become Where an accused a Magistrate for a

tution of jury—If curable.

In certain cases the failure to choose a jury is not fatal. Assessors may be chosen instead of jury and

CR. P. CODE (1898), S 537.

dict of guilty or not guilty, should be constituted strictly according to law. (*Dassi, J.C. and Lobo, J.*) SHE WARAN v. EMPEROR.

184 I C 177—
12 R S 107 = A I R. 1939 Sim.

—S. 537—Applicability—Summons not details—Trial, if initiated.

rence to any rule or stating any other fact in connection therewith, but where at the trial no suggestion was made of any prejudice on this account, the trial is in no way vitiated and defect if any is only an irregularity (*Radha Krishna and Bennett, Jj.*) EMPEROR v. ABDUL. 184 I C 742 = 1939 A W R (C) 248 = 1939 O W N. 960 = 1939 O L R. 647

—S 537—Charge—Disregard of express provision of law as to—Curability See CR. P CODE, SS 233, 238 AND 537. 1939 A L J. 547

—S 537—Non-compliance with S 145 (1) and (3)—Proceedings, if initiated.

A failure to make an initial order as required by sub-S (1) of S 145, Cr P Code to serve notice as required by sub-S (3), and to record in the final order a finding that there was a danger of a breach of the peace, are defects which could be cured under S. 537, Cr. P. Code, and the proceedings are, therefore, not thereby vitiated when the party concerned has not been prejudiced in any manner (*Din Mohammad, J.*) RATAN v TIKA. 183 I C 351 = 12 R L. 112 = 40 Cr L J 784 = 41 P L R 188 = A I R. 1939 Lah 233.

—S 537—Non-compliance with S. 339-A—Effect of.

Where the provisions of S. 339 A are not carried out in the case of an approver, who has forfeited his pardon and is put up for trial and, the charge is read out to him and he has been made to plead to it before and not after he has been asked to plead whether or not he had complied with the terms of the pardon, it is an irregularity curable under S 537 (*Young, C J and Blaker, J.*) GURDIT SINGH v EMPEROR.

I L R (1939) Lah 216 = 181 I C 924 = 11 R L. 899 = 41 P L R 290 = 40 Cr L J 614 = A I R 1939 Lah 66

—S. 537—Scope—Non compliance with S 2 6—Omission to record reasons for asking accused immediately on framing charge whether he wished to cross examine witnesses—If curable. See CR. P. CODE, S 256 19 Pat L T 845

—S 537—Scope—Non-compliance with S 297 - If curable. See 41 Bom L R. 965

—S. 537—Scope of—Limits of interference.

The provisions of S 537, Cr P Code, are mandatory and no Court is entitled to set aside a finding, sentence or order of a subordinate Court in direct contradiction of the terms of the section. The words 'subject' to the provisions hereinbefore mentioned must refer to the other section in that chapter unless there is any specific provisions in any other section of the Code which says that any particular error will vitiate proceedings in spite of the fact that the error is not of a technical nature.

CR. P. CODE (1898), S. 552.

The words 'any Commissioner for taking affidavits in any Court of record in British India' do not mean any

within the Court said to have been viz to administer Commissioner of Oaths de. (*Almond, J.C.*)

184 I C 10 = 12 R. Pesh 22 = 40 Cr L J. 847 = A I R 1939 Pesh. 38.

—S 539-A—Public servant—Chief Minister. The Chief Minister of a province is a 'public servant' within the meaning of S 539 A Cr P Code.

—S. 539-B—Evidence of identification—Appreciation of—Local inspection by Magistrate.

Where in a case in which a Magistrate had to determine whether he was prepared to accept the evidence of identification, the defence being that the case was one of mistaken identity, he visited the spot one night and came to the conclusion that there was sufficient light to enable anybody to mark closely the features of a stranger.

Held that the Magistrate had gone beyond the scope of S 539 B, Cr. P. Code, in assuming, without any evidence, that the condition of the light and atmosphere were the same on the night that he went to the spot as they were at the time of the occurrence and also in assuming that the powers of observation of other persons were as well developed as his, and that, therefore, the conviction based on the local inspection should be set aside. (*Bartley and Henderson Jj.*) BADAL ALI v. EMPEROR. 181 I C 990 = 11 R C. 885 (1) = 40 Cr L J. 624 = 43 C W N 392 = A I R 1939 Cal 304.

—S 539-B—Omission to record memorandum—Magistrate using as evidence map prepared by him—Effect

If a Magistrate making a local inspection not only fails to record a memorandum but also uses as evidence a map prepared by him he places himself in the position of a witness. Unless the map is proven in the witness box, it is impossible to use it as evidence or to say what value should be attached to it. The only course open to a Revision Court in such circumstances is to order a re trial by some other Magistrate. (*Henderson and Sen, Jj.*) RAJENDRA GHOSE v EMPEROR

183 I C 431 = 12 R C. 157 = 40 Cr L J. 795 = 43 C W N 896 = A I R. 1939 Cal 487

—S 540—Duty of Court under—Summoning of witnesses.

Under S. 540 of the Cr P Code, it is manifestly the duty of the Court to summon and examine any person whose evidence the Court considers essential to the just decision of the case. (*Agarwala J.*) NARSINGH SINGH v. EMPEROR. 1939 P W N. 712 = 20 Pat L T 655 = A I R. 1939 Pat 659.

—S 552—Applicability and scope—Detention of girl not specifically alleged to be for unlawful purposes—Guardian's remedy—Jurisdiction to grant relief

to protect women and purposes, although no operate to cases where are clearly unlawful The powers given to

CR P CODE (1898) S 552

District Magistrate by Sec 552 are exceptional powers

girl is for unlawful purposes nor is it suggested by specific purposes but extension of wrongfully custody

Guardians and Wards Act The Magistrate cannot assume jurisdiction which in the absence of allegations of unlawful purposes he does not possess under S 552 Cr P Code to give relief which it is the function of another Court to grant (*Lobo and Weston JJ*) OM RADHE v EMPEROR I L R (1939) Kar 760 =

182 I O 710 = 12 R S 28 = 40 Cr L J 698 =

A I R 1939 Sind 152

—S 552—Procedure—Ex parte warrant—If justified

Although an order for restoration under S 552 can be enforced by a warrant if necessary if an order is ordinarily sufficient to meet the purposes of the section the Magistrate should not make an order for the ex parte issue of a warrant (*Lobo and Weston JJ*) OM RADHE v EMPEROR I L R (1939) Kar 760 =

182 I O 710 = 12 R S 28 = 40 Cr L J 698 =

A I R 1939 Sind 152

—S 552—Order restoring girl to mother—Direction to mother to give guarantee for proper care—Legality

An order directing a mother to whom a girl is restored under S 552 Cr P Code to give a guarantee that the best interests of the girl will be looked after by her is entirely without jurisdiction. No such direction is contemplated by that section (*Bartley and Henderson JJ*) SECRETARY SOCIETY FOR THE PROTECTION OF CHILDREN v ARCHANA DAS 43 O W N 362

—S 552—Order under—When can be passed

The jurisdiction conferred by S 552 Cr P Code depends upon two factors. There must be in the first place an unlawful detention and secondly that that unlawful detention must be for an unlawful purpose. If therefore a society to which a girl was entrusted by her mother for the purpose of housing and care refuses to accede to the mother's request to send the girl back her, an order for the restoration of the girl under S 552 cannot be passed in the absence of a finding that purpose

lawful

SOCIETY

ARCHANA DAS

43 O W N 362

—S 552—Disqualification of Magistrate—Substantial interest—Necessity for

The accused whose duty as accountant the D S P was to prepare bills and treat for withdrawal of money required for food and to present the same at the treasury ment was alleged to have perpetrated falsification of accounts embezzlements cheatings and forgeries in the office of the D S P in connexion with the books and

CR P CODE (1898) S 562

est in the case so as to disqualify him to try the same, stated on that account KING

O 63 = 11 R R 510 =

I R 1939 Rang 152

remarks No oppor

Court to expunge

No one should be condemned unless he has had

High Courts of

administra

it functions

he statement

use yet they

should not be allowed to make disparaging remarks upon

witnesses or those whose names happen to be men

tioned in the proceeding. A witness cannot be condemn

ed merely on conjectures or materials not in evidence

before the Court. The High Court would be justified

in expunging offensive remarks in the exercise of its

powers under S 561 A Cr P Code when they are not

warranted by the evidence on record (*Kadha Krishna*

Sri Vastava J) GOKARAN PRASAD GUPTA v EM

PEROR 184 I O 250 = 12 R O 80 =

1939 A W R (O O) 189 = 1939 O L R 593 =

1939 A Cr C 174 = 40 Cr L J 923 =

1939 O W N 872

—Ss 561 A and 369—Review—Powers of High Court

There is no conflict between Ss 369 and 561 A

S 561 A does not confer upon the High Court new

powers but merely declares that such inherent powers as

the Court may possess shall not be deemed to be limited

or affected by anything contained in the Code. The

High Court has therefore no power to alter or review its

own judgment in criminal cases, once it has been pro

nounced and signed except in cases where it was passed

without jurisdiction or in default of appearance without

an adjudication on the merits or to correct a clerical

error 10 L J relied on (*Abdul Rashid J*) ED

WARD FFW v EMPEROR 183 I O 348 =

12 R L 110 = 40 Cr L J 763 41 F L R 794 =

A I R 1939 Lah 244

—S 562—Applicability—Offences punishable only with fine

S 562 Cr P Code applies to offences punishable

only with fine A I R 1935 Bom 402 Foll (*Abdul*

Qayoom, C J and Wazir, J) STATE v SHAMBU

NATH 41 F L R J & K 74

—S 562 (1 A)—Applicability—Youthful offender

—Conviction under Ss 380 and 457, I P Code—

give sureties and possessed no property of his own and was sentenced to two months rigorous imprisonment

Held that the Magistrate should not have sent this

He should have known the

of imprisonment or indeed,

have upon a young offender

case for the Magistrate when

sed could give no sureties was

offence under S 380 I P

) Cr P Code and to sentence

CE. P. CODE (1898), Ch. X.

him to imprisonment till the rising of the Court for the offence under S. 457, Penal Code. (*Davis, J.C. and Lobo, J.*) L

CRIMINAL TRIAL.

—Appeal—Re-trial—Order for—When to be made.

Here there is sufficient material on record on which jury could reasonably come to a conclusion that the accused were guilty, the mere fact, that in the opinion of the Judicial Commissioner's Court, the jury might come to a contrary conclusion is not sufficient for that Court to take upon itself the duty of acquitting the accused. Where, there is sufficient evidence on record

—Appeal—Sentence passed by Judge of Judicial Session—Court of Judge of

40 Cr L J. 414—41 Bom L R 84—A.I.R. 1939 Bom

CRIMINAL TRIAL

Appeal.

Approver.

Bar of prosecution.

Benefit of doubt.

Burden of proof

Charge to jury.

Complaint.

Confession.

Conviction

Defence

Duty of Court.

Duty of prosecution.

Evidence

First information report

Joinder of charges

Jurisdiction

Jury trial

Procedure.

Sentence.

Transfer.

—Appeal—Acquittal—Interference—Rule—Local inquiry without notice—Acquittal on basis of result of local inquiry—Sustainability.

The High Court is reluctant to interfere with order of acquittal, but when the trial Court commits serious irregularity in the trial, the High Court may interfere and set aside the order of acquittal. Where the trial Magistrate holds a local inquiry and gives notice to the parties and utilises his own course of that enquiry for coming to a finding on the basis of that finding suddenly alters and acquits the accused under S. 247, Cr. P. the order of acquittal is liable to be set aside. *BANKIM BEHARI SEN v YUSUF MIAN* 180 I.C. 858 (1)—5 B.E. 498—11 R.P. 549 (1)—40 Cr L J 514 (1)—1939 P.W.N. 23—19 Pat L.T. 918—A.I.R. 1939 Pat 86

—Appeal—Procedure—Re-trial—When to be ordered.

The Judicial Commissioner's Court has no doubt powers in a case of misdirection to jury to order a re-trial. (*Davis, J.C. a* EMPEROR.

of.

Merely because an approver tells a probable story it cannot be said that it is corroborated. Nor can it be held to be corroborated by mere evidence of notice. Corroboration in its true sense must be such as connects the accused with the offence committed. (*King and Lakshmana Rao, JJ.*) *SUBBANA v. EMPEROR.* 183 I.C. 564—40 Cr L J 801—12 B.M. 311—1939 M.W.N. 316—49 L.W. 520—A.I.R. 1939 Mad 469.

—Bar of—Matter in issue decided by Civil Court—Criminal Court, if debarred from taking cognizance of case.

Though a civil suit and a criminal prosecution may be

Criminal Court from taking cognizance of the case and holding a trial. (*Mooley, J.*) *MAUNG PO NWE v. MA PWA CHONE* 184 I.C. 812—A.I.R. 1939 Rang 394

—Bar of prosecution—Decree of Civil Court in respect of same matter—Effect of—When bar to prosecution. See JURISDICTION—CIVIL AND CRIMINAL COURTS. 41 Bom L R 98

Commissioners should decide the case in an appeal on the paper record. It is a re-trial. (*Davis, J.C. a* EMPEROR.

—Benefit of doubt—Facts proved fitting in with

accused is to molesting his quite as well

CRIMINAL TRIAL

as the hypothesis that the accused had a deliberate intention of committing an assault on the deceased, the accused is entitled to the benefit of the doubt and his case comes under Excep IV to S 300 I P Code (*Dalip Singh and Blacker JJ*) BAKHSHA v EM PEROR 184 IC 325=12 RL 209=40 Cr LJ 928=41 PLR 315=AIR 1939 Lah 426

—Burden of proof—Duty of prosecution—Charge of murder of wife against husband—Essentials to be proved—Accused—If bound to prove that no crime has been committed—Evidence Act S 106—Scope and effect of

In a prosecution for murder, burden lies on the prosecution to establish that the act alleged to constitute murder was really the act of a person other than the deceased. The burden is not cast on the accused person of proving that no crime has been committed. S 106 of the Evidence Act would not absolve the prosecution from the duty of proving that a crime was committed even though it is established that the accused had special knowledge on the point whether a crime was committed or not the deceased being the wife of the accused. Much reliance cannot safely be placed on the conduct of the accused which might appear to indicate consciousness of some guilt (*Pandrang Row J*) KANAKASABAI PILLAI v EMPEROR 50 LW 452=1939 MWN 883

—Burden of proof—Rule

The cardinal or basic rule of the administration of criminal justice is that the prosecution must prove the

1939 MWN 1213

—Charge to jury—Failure to direct jury as to relevancy of evidence of similar transactions—Effect

If a Sessions Judge fails to draw the attention of the jury to the effect of law as to the relevancy of evidence of similar transactions there cannot be said to be a proper direction to the jury (*Abdul Ghami and Singaravelu Mudaliar, JJ*) SETTY In re 17 Mys LJ 238

—Complaint—Dismissal of—Second complaint on same facts—Maintainability

CHELLOMAL v KEWALMAL

ILR (1939) Kar 228=179 IC 898=11 RS 164=40 Cr LJ 287=AIR 1939 Sind 38

—Confession—Conviction on retracted confession—

CRIMINAL TRIAL

Where an accused retracts a confession made by him and alleges that it was not voluntary but was extorted from him by gross torture by the police, resulting in a dislocated shoulder and two broken fingers it is the bounden duty of the Magistrate trying the case to take immediate steps to have the accused examined by a competent doctor (Tendency on the part of Magistrates and Judges to regard themselves as mere recording machines and not to take obvious steps for elucidation of matters before them deprecated and attention of Local Government drawn to the matter) (*Young, C J and Blacker J*) GURDIT SINGH v EMPEROR ILR (1939) Lah 216=181 IC 924=11 RL 899=40 Cr LJ 614=41 PLR 290=AIR 1939 Lah 66

—Confession—Reliance upon part and disregard of the rest—Properly

A confession by the accused should be taken into consideration with the utmost possible care. It is not right for the Court to put reliance on a portion of the statement made by the accused which would implicate him in the commission of a crime and to disregard another part simply because it would go against the prosecution story (*Rachpal Singh and Ismail, JJ*) ABDUL SUBHAN v EMPEROR 1939 AWR (HC) 768=1939 A Cr C 182 1939 ALJ 966

—Confession—Retracted confession—Corroboration—Necessity for

—Confession—Subsequently retracted—Conviction—When justified

The general rule is not to convict on retracted confession unless they are corroborated (*D R Norman*) EMPEROR v BHAGHU NATH 1939 AM LJ 66

—Conviction—Basis of—Evidence of handwriting expert

To base conviction upon the evidence of an expert in handwriting is as a general rule very unsafe (*Nawal kishore, C J and Ranjitrai J*) SARKAR v RUGH NATH 1939 MLR 68 (Cr).

—Basis of—Evidence of witnesses in

Sufficiency for conviction

Upshot of a conviction of the accused on the evidence of witnesses who are minimal to the accused more especially if the assessors are of opinion that it is proved (*Harries, C J and Agarwala*) JAIKO v EMPEROR 179 IC 929=5 BE 322=11 RP 428=40 Cr LJ 318=1939 PWN 283=20 Pat LT 313=AIR 1939 Pat 292

—Conviction—Basis of—Retracted confession—Sufficiency—Law in Mysore

In Mysore it is permissible for the Court to base a conviction on the retracted confession of the accused alone if in the opinion of the Judge it is voluntary and ordinarily some corroboration is looked for (*Ghani Off C J and Singaravelu*) NARAYANA NAIR v GOVERNMENT 17 Mys LJ 491

—Basis of—Mere probability—Suffi

—Confession—Duty of Court—Accused alleging that confession was extorted by torture resulting in injuries to him

It must rest on something more substantial than a mere probability (*Pandrang Row J*) MOHIDEEN PICHAI ROWTHOR v EMPEROR 1939 MWN 879=50 LW 557

CRIMINAL TRIAL.

—Conviction—Evidence for—Evidence by witness.

What a witness does not say is not evidence on which the accused person can be though it may be that the witness is not telling all he knows. (*Davis, J.C. and Weston, J.*) SHEWAKRAM ISSARDAS v. EMPEROR. 182 IC 464=12 ES 8=40 Cr LJ 661=AIR. 1939 Sind 130

—Conviction—Suspicion.

In order to record conviction against an accused person there must be sufficient evidence to prove that the offence was committed by him as suspicious, however strong, cannot take the place of legal proof. (*Abdul Qayoom, C.J. and Kichlu, J.*) 1LMUN v. STATE. 41 F.L.R. J. & K. 17.

—Defence—Right of accused to select of his choice—Advocate called as witness for tion—If bound to withdraw from case—Test—Power of Court to require advocate to withdraw LEGAL PRACTITIONER—ADVOCATE.

41 Bom

—Duty of Court—Case arising out of party faction —Duty to ascertain cause of trouble—Hearsay evidence —Admissibility.

ble unless that third person is examined as a witness or unless it becomes impossible to secure the attendance of such person. (*Acharwal, J.*) NARSINGH SINGH v. EMPEROR 1939 P.W.N. 712=20 Pat L.T. 655=AIR 1939 Pat 659

—Duty of Court—Delay in trying case—Delay of over two years and five months involving 3 months—Depreciation of.

Although the Magistrates are busy and impossible to avoid postponement of a case ly because the Court is occupied with other a case is dragging on for months a somebody's duty to see that it is fixed can certainly be taken up and dispensed. A delay of over two years and five of a case under the Prevention of Gambling Act, involving want of C.J.

41 Bom LR 974=AIR 1939 Bom 465

—Duty of Court—Events which might happen after prosecution—If can be taken into consideration

A Magistrate trying an accused must, dispose of the case, take into consideration events that had taken place until the date accused was prosecuted, and cannot take into account the possibility of some act that the accused do subsequent to the prosecution (*Iyengar, J.*) MANJAPPA v. GOVE Mysore. 17 Mysore L.R. 222

—Duty of Court—Evidence entirely circumstantial —Two interpretations open—Which to be adopted—Considerations

Where two interpretations are possible in a case in which the evidence is entirely circumstantial, it is not

CRIMINAL TRIAL.

—Duty of Court—Protection against abuses of the criminal procedure.

A criminal prosecution which has little chance of ultimate success, is frequently used as a means of annoyance. In such cases it is the duty of the Magistrate to protect the public against such abuses of the criminal procedure. (*Norman, J.C.S.*) BANO v. RAHIM BANO. 1939 A.M.L.J. 41.

—Duty of police—Raising of communal questions —Undesirability.

Police Officers are not to be permitted to raise communal questions.

—Duty of prosecution.

In a criminal trial the prosecution have to do more

J.L. and Lobo, J.) SHEWAKRAM v. EMPEROR 184 IC 474=12 ES 107=AIR. 1939 Sind 209.

—Duty of prosecution—Delay in investigation, preliminary inquiry and in laying the charge—Effect of.

The Crown which has come down to the fact of preliminary inquiry and in the laying of a charge, these are features which have to be taken into account by the jury in considering the guilt of the accused. (*Pandurang Row, J.*) EMPEROR v. KRISHNAN. 1939 M.W.N. 1215.

—Duty of prosecution—Duty to place entire evidence before Court

It is the duty of the Public Prosecutor to conduct the prosecution and he should be not to see that justice is done. He should place before the Court the evidence of the accused persons and should not call the evidence of the accused persons if he did not believe in it. Judge and not for the evidence should be believed or not. (*Dunkley and Wright, J.J.*) NGA SAR KEE v. THE KING 1939 Rang. 390

—Duty of prosecution—Examination of complaint—Necessity—Failure to examine complainant—Propriety.

A Court should not countenance or approve of a case in which the complainant is not examined.

CRIMINAL TRIAL

—Duty of prosecution—Examination of eye-witnesses—Rule as to

Though the prosecution need not call all the eye witnesses, irrespective of considerations of number and of

—Duty of prosecution—Placing of entire evidence before Court

It is a well established rule of law that it is the bound

and which portion is false. The prosecution has power no doubt to elect one set of evidence when there is conflicting evidence. But their duty is to see that the trial Judge is informed about the opposite version and then it will be for the Judge to decide whether he should hear the evidence or not. Where the prosecution suspects the bona fides of the case as put before the Court by suspending the investigating officer it is their duty to place before the Court the evidence of all the witnesses examined subsequent to the suspension. Else it is most unfair to the accused who is entitled to take full advantage of all points which might throw doubt on the prosecution story (*Ra Hpal Singh and Ismail, JJ*)

ABDUL SUBHAN v EMPEROR

1939 A W R (H C) 788 = 1939 A Cr O 182 = 1939 A L J 966

—Evidence—Appreciation—Discrepancies

"There is unfortunately a frequent tendency to lay too much stress on discrepancies without appreciate their real value and effect. Experience that discrepancies do occur even in statements of perfectly honest witnesses which are due to differences in individual faculties with observation, recollection and recital of

there is general agreement as to material circumstances

C J at

of

deliberate attempt to suppress or depart from the truth it is unfair to discard the direct testimony of witness

merely on ground of a general agreement as to 1934 Lah 710 (Foll JJ) PURKHA v SEE

—Evidence—Appreciation—Held unreliable against on against others

CRIMINAL TRIAL

Evidence which is unreliable must be deemed to be unreliable against all the accused persons. It cannot be said to be unreliable as against certain accused only and reliable as against others when the witnesses are

ne (*Pandurang Row J*) MOHI

HER v EMPEROR

1939 M W N 879 = 50 L W 557.

Appreciation of—Statement after natrag evidence

witnesses kept quiet for three full Police the present version of the in some incriminating evidence was tem is sufficient to rob their evidence

of all value" (*Abdul Qayoom, C J and Kichlu J*) ILNUM v STATE

—Evidence—Approver's testimony—Value—Refi-

not the statement of into consideration or which will depend on

the circumstances of each case. Beyond stating that the statement of an approver must be very thoroughly scrutinised and should not be accepted unless it is corroborated by other independent evidence in the case no hard and fast rule can be enunciated which will govern all cases (*Rachhpal Singh J*) BHOLA NATH v EMPEROR

181 IO 191 = 12 RA 189 = 40 Cr L J 856 = 1939 A Cr O 98 = 1939 A L J 785 = 1939 A W R (H C) 464 = A I R 1939 All 567

—Evidence—Charge under S 201 and 302, I P. Code—Statements by accused to police—Use of in proof of charge under S 201—Admissibility as substantive evidence of offence under S 302

Where the prosecution rely on certain statements made by the accused to the police to convict them of an offence under S 201 then they can only do so by showing by other evidence the falsity of the statements. Those statements cannot themselves be used as substant-

in be ind

A I R 1939 Sind 130

—Evidence—Circumstantial evidence—Charge of murder—Conviction based on such evidence—When justified

Where the charge of murder is based purely on

within all human probability the act must have been

to 115 J) 300 100

—Evidence—Index with notes of things said to have happened at various points in the case—If can be

CRIMINAL TRIAL.

and Rowland.

POTHAL 18.

11 R.P. 65

2

—Evidence—Proof—Disbelieved statement of accused—If can be treated as proof of a fact for the prosecution

No fact material to the prosecution can solely by a statement of the accused which does not believe. (D.R. Norman.) CHANE. 1939 A.I.

—Evidence—Reliability—Prosecution unreliable—Evidence in favour of accused, if can be relied upon by accused.

Though a prosecution witness may have been found by a Court to be an unreliable witness, nevertheless the accused is entitled to rely on the statement of such a witness and particularly so where the circumstances support the statement. (Rachpal Sir JJ.)

MATHURA I. EMPEROR.

1938 A.W.R. (H.C.) 849=1

—Evidence—Right of accused to Magistrate.

Undoubtedly, a Magistrate is bound to allow an accused to defend himself, but on the charge brought against him and to which he has to answer, but the Magistrate should not allow for instance, an accused person charged with theft to bring evidence to justify his theft. He can however bring evidence to explain

—Evidence—Statements by accused to police—Use of against co-accused—Sufficiency for conviction.

Accused persons are to be convicted upon the evidence produced by the prosecution and not by the statements made by co-accused in the trial. A person's position as a witness or accused is, so far as the admissibility of

persons as first witnesses

—Evidence—Value of

Existence of minor discrepancies and shows witnesses are not tutored

Ranjimal, J.) CHOTHU D. JANNAN

—Evidence—Value of—Per

this not only to act

1939 M.L.R. 78 (Cr.)

—Evidence—Value of—Witness being complainant's relation

The fact that the witness is a relation of the complainant is insufficient for discrediting his testimony unless it is further shown that he is a partisan of the complainant or inimical to the accused (Nawal

CRIMINAL TRIAL.

v. (Cr.).

the principal prosecution witnesses are inter-related, their statements should not be believed in toto and that the

v. EMPEROR.

41 P.L.R. 802.

—First information report—Sufficiency to base conviction—Charge under Ss 201 and 302, I.P. Code—Incriminating report by accused—Use and evidentiary value of as basis of conviction

In a trial for offences under S 302 or S. 201, a first

information report under S 201. Although accused persons can, in certain cases, be tried for murder and convicted of causing evidence to disappear, there is evidence, usually other than the mere statements of the accused, to show that they have caused evidence to disappear. Though in a trial for an offence under S 201, the first information report can be made the basis of a conviction in such a case the accused is not tried for murder and his first information is not a confession. (Datta, J.C. and Weston J.) SHEWAKRAM ISSARDAS v. EMPEROR 182 I.C. 464=12 R.S. 8=40 Cr.L.J. 661= A.I.R. 1939 Sind 130.

—Jundar of charges—Several charges of unlawful assembly with common object and rioting and other offences against several persons—Common object not proved—Joint trial and conviction of individual offenders—

nine charges, forming of an common object and of that common common object e accused were P. Code, but

19 Roto,

1

413=

117=

A.I.R. 1939 Mad 406=(1939)1 M.L.J. 259.

—Judgment—Duty of appellate Court—Consideration of defence evidence—Necessity.

It is the duty of an appellate Court to consider the defence evidence for what it may be worth, with as much care and attention as the prosecution evidence. Unless this is done, the judgment is vitiated and is no judgment in law. (Radakrishna Srinivasa, J.) HULASI v. CHHOTAY LAL. 1939 O.A. 820= 1939 O.W.N. 1105=1939 A.W.R. (C.C.)

CRIMINAL TRIAL

—Judgment—Remarks against person not before Court and without affording opportunity for him—Expunging of

Remarks made in a judgment against a was not before the Court and remarks made

CRIMINAL TRIAL.

—Procedure—Restoration of proceedings dismissed

ult—Powers

is no provision in the Cr P Code which would

are dismissed for

GHIRAI

39 OWN 974=

WR (CC) 277

—Revision—Questions of facts—If can be raised

In revision the High Court cannot allow the applicant

to introduce questions of fact which as they were not

disputed by implication were admitted in the lower

Court (Davis J C and Lobo J) SHEWARAM v

EMPEROR 184 IC 474=12 R S 107=

AIR 1939 Sind 209

—Jury trial—Charge to jury—Duty of Judge to

explain functions of Judge and jury

It is necessary for a Sessions Judge in his charge to

the jury to explain to them the functions of the Judge

and jury, as otherwise the jury who are laymen may

overstep the bounds of their function (Abdul Ghani

and Singaravelu Mudaliar JJ) SETTY In re

17 Mys LJ 238

—Practice—Predecessor's orders—Going behind—

Competency

A Magistrate is not competent in law on the same

legality See CR P CODE SS 200-203

—Procedure—Joint trial of several offences—Rule

as to—Corpus delicti—Relevancy See CR P CODE

S 235 1939 PWN 300

—Procedure—Plea of absence of jurisdiction up

held—Transfer by District Magistrate to another

Magistrate having jurisdiction—Legality

Petitioner who was charged with an offence before the

Sub Divisional Magistrate of objected to the jurisdic

tion of that Magistrate The Magistrate upheld the

plea and submitted the records to the District Magistrate

AIR 1939 Sind 342

—Sentence—Fine when accused is without means

There is no point in imposing a fine on an accused

who is apparently without means and incapable of paying

it (Davies, J C S.) EMPEROR v KARIM

1938 A M LJ 134.

—Sentence—Specific offence proved to be connected

with the general conspiracy for which sentence imposed—

Additional sentence for specific offence should not be

passed

Where a person's proved connexion with the specific

offence of cheating is only through the general conspiracy

to cheat and he has already received a sentence of a

certain term of imprisonment for his part in the general

conspiracy, there should be no additional sentence on

the cheating charge (Bartley and Rau, JJ) SOLO-

AIR 1939 Pat 388

—Sentence—Fine when accused is without means

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the cheating charge (Bartley and Rau, JJ) SOLO-

CUSTOM

upon the cumulative effect of the entire evidence (*Niamatullah and Baipar, JJ*) MAHADEO v BALESHWAR PRASAD 1939 A L J 708 = 1939 A W R (H C) 671 = 1939 E D 493 =

A I R 1939 A L I 626
— Evidence—Instances *post item*—Admissibility
See EVIDENCE ACT, S 13 41 P L R 21 =

A I R 1939 L a h 152
— Fact of adoption disproved—Certificate as to custom—If can be granted See PUNJAB COURTS ACT, S 41 A I R 1939 L a h 135

— Family custom—Exclusion of daughters from inheritance—*Brahm Gaur Thakurs of Pawayan estate in Shahjahanpur district*

Among the *Brahm Gaur Thakurs* of the *Pawayan* estate situated in the *Shahjahanpur* District of the United Provinces the custom mon practice in the family of

620 =

157 =

90 =

143 =

145 =

1939 A L J 264 = 41 Bom L R 700 =

A I R 1939 P C 22 (P C)

— Family custom—Proof—Exclusion of daughters
— Instances of custom taking effect—If need be proved

Where a family custom from inheritance is pleaded such a custom taking effect
George Lowndes AJAI VER I L R (1939) Kar 98 =

1939 P W N 143 = 1939 M W N 217 =
11 E P C 145 = 1939 A L J 264 = 41 Bom L R 700 =

179 I C 620 = 1939 A W R (P C) 1 =
1939 O W N 157 = 41 P L R 112 = 5 E R 312 =

1939 O L R 90 = A I R 1939 P C 22 (P C)

— Family custom—Proof of
A family custom may be proved the following kinds of evidence though not conclusive these
affording the views of Government when there was no controversy
Judgments of Courts by which judicially recognised (c) Statements by persons having special means of knowledge about such customs
JAITMAL SINGH v RAWAT HEERSINGH

1939 M L R 14 (I K)
— Family custom—Proof—Opinion of responsible members of the family—Admissibility—Value

Where a family custom is pleaded the opinions of responsible members of the family as to the existence of such a custom and the grounds of their opinion though generally in the nature of family tradition are clearly admissible There is no reason why such testimony should be disregarded (*Sir George Lowndes*) AJAI VERMA v VAJAI KUMARI

I L R (1939) Kar 98 (P C) = 43 C W N 585 =
179 I C 620 = 1939 P W N 143 = 1939 M W N 217 =

11 R P C 145 = 1939 A L J 264 =
12 =

12 =
P C)

ference in second appeal See C P CODE S 100—
CUSTOM 1939 O W N 372

See also 1939 A W R (H C) 313
— Finding on custom not based on any evidence—
Certificate if necessary for second appeal See PUNJAB

CUSTOM

COURTS ACT, S 41 A I R 1939 L a h 356
— Gaywals of Gaya—Gift of gadi by sonless Gayawal
— Effect See HINDU LAW—ADOPTION—GAYAWALS OF GAYA 180 I C 990 = 5 E R 516

— How made
Customs are made by the consent of the parties or by the operation of natural forces, they cannot be super imposed by Government All that the Government can do is to make the way easy for those who may be in favour of the change JAITMAL SINGH v RAWAT HEERSINGH 1939 M L R 14 (I K)

— Judicial decisions—Value—Considerations See EVIDENCE ACT, S 13—JUDICIAL DECISIONS 1939 A L J 708

— Personal law—Applicability—Presumption—
Burden of proof—Agriculturists tribes of Punjab mi- of succession

any presumption in
verned by customary
t must be proved

neither S 5 of the Bombay Regulation IV of 1827 nor S 5 of the Punjab Laws Act raises any presumption of any custom as against the general or any personal law

It is only when custom is established that it is to be the rule of law Any special custom or usage modifying the ordinary law of succession should be ancient and invariable and should be established by clear and unambiguous evidence The best evidence of custom is found in connection with the division of land and the Revenue value when the parties belonging

grated from the
abhi, J) AISHA
339) Kar 475 =

185 I C 87 = A I R 1939 Sind 263

— Proof—General custom—Special custom derogat-
ing from general—Burden of proof

Where a person governed by the customary law seeks to derogate from the customary law in favour of a special custom this like a general custom must be ancient and well established

n old custom has fallen in
by a new custom the new
evidence of conduct over a
vis J C and Tyabji J)

31
1 L R (1939) Kar 475 = 185 I C 87 =
A I R 1939 Sind 263

— Proof—Hindu Law—Custom as to grant
of maintenance to illegitimate children of members—
Reasonableness—When can be held to be established—
Evidence requisite

A custom in a Hindu family to grant maintenance cannot be regarded as being unreasonable but custom can only be relied upon where it is ancient certain and where the evidence falls very short of proving this the custom cannot be held to be proved The fact that among some families provision has been made for the maintenance of illegitimate children of members of their families cannot be regarded as sufficient to prove a similar custom among other families belonging to a different sub caste (*Leach C J and Krishnaswami Ayyangar, J*) MAHARAJAN OF VENKATAGIRI v RAJARAJESWARA RAO I L R (1939) Mad 622 =

49 L W 717 = 1939 M W N 522 =
A I R 1939 Mad 614 = (1939) 1 M L J 831

— Proof—Right of villagers to use land of
another as graveyard or burial ground—Essentials of
— Uncertainty as to extent of land used as burial
ground—Effect of—Power of Court to define limits
arbitrarily

CUSTOM.

A Court should not decide that a local custom exists entitling the residents of a village to use a plot of land belonging to another as a graveyard or burial ground

tion whether the custom of privacy existed in the plaintiff's community. (*Nawal Kishore, C.J.*) **GOPILAL v FATEHLAL** 1939 M L R 8 (Civ)

—*Supercession of Hindu Law—Essentials*
A custom in supercession of the ordinary rules of Hindu Law, must be ancient, certain and reasonable and being in derogation of the general rules of law must be proved by very strong evidence and be construed strictly. (*Hamilton, J.*) **JADUNATH SINGH v BISHESHAR SINGH** 178 IC 950= 1938 O W N 1267=1939 O A 2=11 R O 127= A I R 1939 Oudh 17

ral or opposed to public policy. A custom cannot be declared to be invalid on general considerations or because it is at variance with the provisions of Hindu Law (*Abdul Rashid, J.*) **HARI SINGH PREM v MOTI RAM** 181 IC 96=12 R L 161= 41 P L R 417=A I R 1939 Lah 196

trary to public policy (*Nawal Kishore, C.J. and Ram Jitalal, J.*) **MOHAMMAD RAMZAN v. IDU**

1939 M L R. 101 (Civ.)
—(Punjab)—Abadi—Alienation of house sites—*Right of non-proprietors—Presumption*

The initial presumption is that the *abadi* belongs to the proprietary body although they are not entitled to it heavily on the non pr alienation. (*Skimp, J.*) **SHAHAN LALL WALAH CHAND** 183 IC 794=12 R L 187= 41 P L R 21= A I R 1939 Lah 105

—(Punjab)—Abadi—Alienation of house sites—*Right of non-proprietors—Proof of custom*

CUSTOM (Punjab).

v. KAILASH CHAND. 183 IC 794=12 R L 187= 41 P L R 21=A I R 1939 Lah 105,
—(Punjab)—Abadi—Alienation of house sites—*Right of non-proprietors—Sahna village,*

41 P L R 441—A I R. 1939 Lah 100.
—(Punjab)—Adna maliki—*Right of—Village Noon Nasheb, District Mianwali*

The meaning of the *wayb ul-arz* of the village Noon-Nasheb, District Mianwali, is that the *adna maliks*, whose land has been completely submerged, have a special right to get from existing banjar *shamilat* or from other land, which has emerged, areas equal to their submerged areas. Such land can be taken by the *adna maliks* immediately after it reappeared and though *ghurt* must be paid by the *adna maliks* to the *ala maliks* the payment thereof is not a condition precedent to the

According to the custom relating to adoption among the Sara subcaste of the Jat tribe in village Hans, Tahsil Jagraon, District Ludhiana, no special formalities are considered necessary in cases of adoption but a mere declaration of adoption and general treatment as a son are considered sufficient. Where there is a deed

A I R 1939 Lah 62
—(Punjab)—Adoption—*Jats of Gurgaon District—Adoption of married person*

Among the Jats of Gurgaon District when an adoption of a married man takes place, and all the ceremonies connected with Hindu Law adoption are

184 IC 96=12 R L 161=41 P L R 417= A I R 1939 Lah 196.

—(Punjab)—Alienation—*Ancestral property—Just debt, meaning of*

which is actually due and is to public policy, and act of reckless extravagance with the intention of defrauding creditors. (*Lord Romer.*)

CUSTOM (Punjab)

SURENDAR SINGH v GHULAM MOHAMMAD
 66 IA 177-41 Bom LR 1245-5 BR 639=
 43 CWN 786-41 PLR 454-1939 OLR 316=
 1939 OWN 557-11 RPC 253=
 I LR (1939) Kar 268 (PC) 50 LW 23=
 1939 OA 553-1939 MWN 1177=
 1939 AWR (PC) 97-181 IC 308=
 AIR 1939 PC 150 (PC)

—(Punjab)—Alienation—Ancestral property—
 Necessity—Existence of decretal debts

The mere existence of decretal debts is not sufficient proof of there being legal necessity on the part of an alienor of ancestral lands governed by the customary law of the Punjab. It must further be shown that the debts which were decreed were just debts (*Lord Romer*). SURENDAR SINGH v GHULAM MOHAMMAD

66 IA 177 41 Bom LR 1245=
 5 BR 639-43 CWN 786-41 PLR 454=
 1939 OWN 557-11 RPC 253=
 I LR (1939) Kar 268 (PC) =50 LW 23-
 1939 OA 553 1939 MWN 1177-
 1939 AWR (PC) 97 181 IC 308=
 AIR 1939 PC 150 (PC)

—(Punjab)—Alienation—Ancestral property—
 Necessity—Onus

In the case of an alienation of ancestral lands in the Punjab which is governed by the customary law the onus lies on the mortgagee of proving either that there was legal necessity in fact which would justify the alienation or that he made a proper and bona fide enquiry into the alleged necessity and satisfied himself as to the existence of the alleged necessity. But if he discharges the burden he is not bound to see that the money paid by him is actually applied by the mortgagor to meet the necessity (*Lord Romer*). SURENDAR SINGH v GHULAM MOHAMMAD

66 IA 177=
 41 Bom LR 1245-5 BR 639-43 CWN 786-
 41 PLR 454-1939 OWN 557 11 RPC 253=
 I LR (1939) Kar 268 (PC) 50 LW 23-
 1939 OA 553-1939 MWN 1177-
 1939 AWR (PC) 97-181 IC 308=
 AIR 1939 PC 150 (PC)

—(Punjab)—Alienation—Necessity—Antecedent
 debt

Payment to discharge a decretal debt constitutes necessity.

CUSTOM (Punjab)

—(Punjab)—Alienation—Necessity—Proof—
 Antecedent creditor being alienee

Where the original debt is a just one the alienee is protected whether he himself is the antecedent creditor or not. Hence an alienee even when he himself is an antecedent creditor need not prove that the antecedent

41 PLR 627

—(Punjab)—Alienation—Necessity—Proof—
 Antecedent debt

In the case of an alienation for antecedent debt there is no necessity for the alienee to prove anything further than the existence of that debt, unless there are circumstances

—(Punjab)—Alienation—Non proprietors—
 Landlords in Sohna—Right to challenge

The landlords in Sohna, though it is not a village but a town, have no right to challenge an alienation of a house belonging to a non proprietor unless the landlord can show that the house was built on land granted by the proprietary body out of the *shamilat deh*. AIR 1939 Lah 88 Reversed (*Aldson and Ram Lal vs*) RANJIT SINGH v NAWAB KHAN

41 PLR 826-AIR 1939 Lah 548

—(Punjab)—Alienation—Non proprietors—
 Rights of—Rule as to

In deciding the question whether a non proprietor has the right to alienate a house belonging to him broadly stated it may be taken as a rule that where a large number of unchallenged alienations by non proprietors have been taking place for a very long period the onus should be placed on the landlords to show that they have

This, they may be
 t and then the case
 that grant (*Add*)

SINGH v NAWAB

KHAN 41 PLR 826-AIR 1939 Lah 548

—(Punjab)—Alienation—Non proprietors—
 Rights of—Village Mazara Dingrian Tahsil Garh

quired to discharge previous mortgage

Money required for the discharge of a previous mortgage is for necessity. The fact that the vendee has not paid the previous mortgagee does not mean absence of necessity for the payment of the item (*Rk de J*). KHAMANA v SITA SINGH

182 IC 801 (1)-
 12 RL 76 41 PLR 16 (1)-
 AIR 1939 Lah 182

—(Punjab)—Alienation—Necessity—Proof—Alienation by male proprietor—Proof that alienor could

—(Punjab)—Alienation—Powers of—Dharmial
 Rajputs of Gujarkhan Tehsil Rawalpindi District

According to the custom governing Dharmial Rajputs of the Gujarkhan Tehsil of Rawalpindi District a sonless proprietor is competent to make a gift of an estral property in favour of his daughter (*Bhude J*). NIZAM DIN v MT FAZAL NUR

184 IC 46-
 41 PLR 793-12 RL 147-AIR 1939 Lah 259

—(Punjab)—Alienation—Reversioner—Declaration suit by—Competency—Alienation of occupancy rights

A suit by a reversioner to declare that a certain alienation does not affect his reversionary right is

CUSTOM (Punjab).

If a person entitled to challenge an alienation is present at the mutation proceedings and does not object when there is every opportunity of objection, he cannot challenge the alienation.

J. ABDULLA v. MEHARBAN.

—(Punjab)—Alienation—Right to challenge—Person born subsequent to alienation.

An alienation of ancestral property cannot be challenged by a descendant who did not exist at the date of alienation. (*Addison and Ram Lall, JJ*) CHUNI LAL RALI RAM v. ALTAF UL RAHMAN.

183 I.C. 451=12 R.L. 115=A.I.R. 1939 Lah. 290

—(Punjab)—Alienation—Right to challenge—Remote reversioner.

Although the general rule is that the proper person to object to an alienation by a female is the nearest reversionary heir, this is not an absolute rule. A suit by a remote reversioner to set aside an alienation by widow cannot be dismissed on the ground of its being speculative, if it has been brought in the interests of his relative who is nearer reversioner. (*Skemp, J.*) MOHAMMAD KHAN v. JAN MOHAMMAD

A.I.R. 1939 Lah. 580.

—(Punjab)—Alienation—Right to challenge—Reversioner—Nature of right—Suit by minor reversioner—Limitation

The right of the reversioners to contest an alienation by the last maleholder is not a joint and indivisible one and the omission by one reversioner to sue does not debar the others from the suing at all. Each one of the reversioners has an independent and individual right to sue though the decree obtained by one may enure for the benefit of all. The question of limitation in such a case, is to be considered with reference to the plaintiff in each case.

is minor when right to sue accrues to him, he is entitled to sue at any time within the years of his attaining majority. (*HARI SINGH PREM v. MOTI RAM*)

184 I.C. 96=12 R.L. 161

A.I.R. 1939 Lah. 290

—(Punjab)—Alienation—Right to challenge—Right of daughter—Hindu Jats of Rohtak District

A female has no right to contest an alienation by another female unless she is immediate heir and the alienor possesses a limited estate. According to the customary law of Rohtak District a daughter has no right to inherit and is not therefore heir. Hence she has no *locus standi* to challenge alienation made by another female who is full owner. (*Skemp, J.*) MAM KAUR v. MOLIA

179 I.C. 824=11 R.L. 639=41 P.L.R. 11=

A.I.R. 1939 Lah. 20

—(Punjab)—Alienation—Widow—Jasrota Rajputs of village Sukho Chak in Gurdaspur District.

The Jasrota Rajputs of village Sukho Chak in Gurdaspur District follow custom and not Hindu Law. They are the predominant agricultural tribe of the district and the mere fact that many of them enter the army or take up other service does not mean that they have ceased to follow custom. Hence a widow has no power to mortgage agricultural land to pay off her husband's debts because like Hindu Law it is not a case under customary law that a widow can pay off the debts of her husband which are time-barred or not otherwise recoverable. (*Addison and Ram Lall, JJ*) KISAL SINGH v. ARJAN DEVI.

184 I.C. 89=12 R.L. 158=

A.I.R. 1939 Lah. 319

—(Punjab)—Alienation—Widow—Legal necessity—Pilgrimage to Gaya.

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Pilgrimage to Gaya by a widow is according to Hindu ideas for the spiritual benefit of her deceased husband.

ration by reversioner—Exact degree of relationship—If material.

In a suit for declaration by reversioner that a sale by a widow should not affect reversionary rights the exact degree of relationship is not material. A reversioner however distant is competent to challenge a widow's alienation. (*Bhide, J.*) MANSA RAM v. SADHU RAM.

A.I.R. 1939 Lah. 554.

—(Punjab)—Ancestral property—Decree against father—Execution against minor son—Ferozepore District.

The answer to question 32 of the Ferozepore riwaj is to the effect that a minor who has inherited his father's estate is liable for his father's debts does not mean that he succeeded his father as his legal representative. It means that, in order to pay the debts of a minor's deceased father, the minor's guardian can do what the minor himself could have done under customary law, had he reached majority. Ancestral property in the hands of a minor son cannot therefore be attached in execution of a money decree against his deceased father. A.I.R. 1937 Lah. 148, Foll. (*Abdul Rashid, J.*) NAND MAL DURGA DAS v. NAZIR AHMAD

41 P.L.R. 635=A.I.R. 1939 Lah. 168.

—(Punjab)—Ancestral property—Property acquired by son from father by genuine sale—If ceases to be ancestral

Property ceases to be ancestral when it comes into the

—(Punjab)—Ancestral property—Sale of ancestral property resulting in acceleration of succession—If renders property non ancestral.

A gift or sale of ancestral property by its owner in favour of a relation, the effect of which is direct acceleration of succession, does not render the property gifted or sold non ancestral. There is no distinction between a gift and a sale in such cases. The real test is whether the alienation, whatever form it takes is or is not an acceleration of succession. If it is acceleration of succession, it does not deprive the property transferred of its ancestral character. (*Skemp, J.*) BALWANT SINGH v. GURBACHAN SINGH

184 I.C. 61=

12 R.L. 150=A.I.R. 1939 Lah. 286.

—(Punjab)—Applicability—Mahomedan Jats of Punjab migrating and settling in Sind—Law applicable

—Punjab custom excluding females from succession—Applicability—Mahomedan law—Application of.

In the case of Jats (agriculturists) belonging to the Sunni Mahomedan community who have migrated from the Punjab and settled in Sind under a colonisation scheme to cultivate land watered by the Jamrao canal, and who have migrated as members of the agriculturist classes, bringing with them their cattle, their implements and their womenfolk to live in Sind the same life as they lived in the Punjab, it must be held that they are governed, even in Sind, by the customary law of the Punjab in matters of succession and inheritance. It is

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unreasonable to suggest that they did not bring with them when they came to Sind their including the customary law of succession customary law would not stand the migration This customary law excludes rare exceptions in the presence of mal Mahomedan Law does not apply to them are Sunni Mahomedans (*Davis J C*)

J) AISHA BIBI v BEGUM BIBI

I L R (1939) Kar 475=185 I C 87=

A I R 1939 Sind 263

—(Punjab)—Applicability—Proof—Tribe consulted during preparation of *riwaj-i am*

The fact that a tribe was consulted during the preparation of the *riwaj-i am* of the district has always been

—(Punjab)—Customary dues—Village Mandauli

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be enforced as it is unreasonable and oppressive It is not only the monetary aspect of the burden which is unreasonable and oppressive it is also t of the duty imposed on the banias unreasonable than the monetary bu are subjected The amount payable go on increasing as the number of kh irrespective of the fact whether any further advantage is conferred on the bania by the multiplication of the number of the khewatdars (*Abdul Rashid, J*) DASAUNDHI KHAN v SADHU A I R 1939 Lah 310

—(Punjab)—Dastarbandi—Significance

The ceremony of *Dastarbandi* or placing the *Dastar* or tying it round the head of a person is not a ceremony of selection but it is a ceremony of installation (*Thomas J*) ALI RAZA KHAN v NAWAZISH ALI KHAN 1938 O A 845=1938 O W N 1157

—(Punjab)—Irrigation rights—Dera Ghazi Khan District—Haqq-i-abpashi—Authority of

The custom in the Dera Ghazi Khan Dist if any land is entitled to irrigation from stream or channel It is definitely recorded as in the document known as the *Haqq-i-abp* being a particular statement of individual rights clearly

that is frequently given to her under customary law for her maintenance and the maintenance of her daughters (*Addison and Ram Lal, J J*) DHARMON v RAN SINGH 41 P L R 620=A I R 1939 Lah 563

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am, which has been established by the Local Govern-

absence of the *riwaj-i am*, reference may be made to Rattigan's Digest of customary law (*Davis, J C and Tyabji, J*) AISHA BIBI v BEGUM BIBI

I L R (1939) Kar 475=185 I C 87=

A I R 1939 Sind 263

—(Punjab)—*Riway-i am*—Evidentiary value

Even if *riwaj-i am* is not supported by any instances the *riwaj-i am* must be looked upon as a strong piece of evidence (*Bhide J*) JAI NARAIN v MT PARSANI

184 I C 648 (1)=12 R L 240=41 P L R 822=

A I R 1939 Lah 358

—(Punjab)—*Riway-i am*—Presumption—If rebutted by instances of other sub divisions of tribe

Custom is a question of fact and not of inference Where the entries in the *riwaj-i am* assert that a certain alar sub division of the to other sub divisions of rebut the presumption *riwaj-i am* (*Bhide, J*)

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147=41 P L R 793=

A I R 1939 Lah 259

—(Punjab)—Succession—Rajadar son—Jalapt

A I R 1939 Lah 660

—(Punjab)—Succession—Daughter—Hindu Jats of District Rohtak

According to the customary law of the Hindu Jats of District Rohtak a daughter has no right to inherit (*Skemp, J*) M1 MAM KAUR v MOLIA

179 I C 824=11 R L 639=41 P L R 11=

A I R 1939 Lah 20

—(Punjab)—Succession—Daughters—Jodh Rai puts of Chakwal tahsil

Daughters of Jodh Rajputs of Chakwal tahsil are entitled to succeed to their father's non ancestral pro-

—(Punjab)—Succession—Daughter—Mahtams of

Lall, J J) KARAM BAKSH v MEHTAB BIBI

183 I C 768=12 R L 136=41 P L R 298=

A I R 1939 Lah 93

—(Punjab)—Succession—Daughters and colla

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—(Punjab)—Village or town—Test.

A place which has got public buildings like a school, dispensary, police station, post-office, which has had a population for 70 years or more of over five thousand, which has got two or three bazars and 300 or 400 pucca shops and paved streets and which collected octroi dues over 50 years ago must be regarded as a town and not a village. The mere fact that the tenure in the place is bharachara does not in any way conflict with its being a town and not a village. (*Addison and Ram Lall, J.*)
RANJIT SINGH v. NAWAB KHAN. 41 P L R 826 =
 A I R 1939 Lah 548.

—(Punjab)—Widow—Alienation—Powers of—
Awans of Pura Neka

Awans of Pura Neka are governed by custom. According to the custom, the widow inherits the entire life estate and the property.
(Bride, J.)
 182

A I R, 1939 Lah 61.

—(Punjab)—Will—Muslim proprietor in
Jhelum District—Power of bequest.

the customary law is on the daughters claiming under the will. (*Abdul Rashid, J.*) **IMAM ALI v. SUGHRAN BEGUM.**
 A I R 1939 Lah 382

DAMAGES See also (1) CONTRACT ACT, Ss 73 AND 75.

(2) INTERESTS

(3) TORT—DAMAGES.

(4) VENDOR AND PURCHASER

—Right to—Principle underlying—
*by the opposition of another—If an injury
 sense of the term.*

Damages are pecuniary compensation awarded to a person for actual injury which is caused by reason of the act or default of another. Where a plaintiff alleges that the defendant's actions in trying to prevent the performance of a certain ceremony which the plaintiff proposed to perform, caused him much worry, that so-called worry is nothing but a mental perturbation or emotional excitement caused by the opposition set up by the defendants. It is of too trivial a nature to be regarded as injury in the legal sense of the term. That 'worry' cannot supply the plaintiff with any cause of action for damages. (*Niyogi, J.*)
DIPCHAND KUNDANMAL v. MANAKCHAND MULTANWAL.
 I L R (1939) Nag 429 =
 182 I O 18 = 11 E N 504 = 1939 N L J. 184 =
 A I R. 1939 Nag 154

—Tenant holding over—Measure of damages. See
LANDLORD AND TENANT—HOLDING OVER
 1939 M L R. 219 (Civ.).

—Wrongful attachment—Application for compensation under C. P. Code, S 95—Proof of special damage—If essential. See C P CODE, S 95. 60 L.W. 640

DANGEROUS DRUGS ACT (II OF 1930)—Pro-
cedure—Trial of offence under—Duty to avoid delay.

In a case under the Dangerous Drugs Act, it is essential in the interests of justice that there should be as little delay as possible in the trial. (*Harries, C. J. and Varma, J.*) **NISAR AHMAD v. EMPEROR.**
 5 B R 499 = 180 I C 839 = 11 E P. 541 =

DECREE.

40 Cr L J. 419 = 1938 P.W.N. 832 =

19 Pat L T. 845 = A I R 1939 Pat 172.

—S. 14 (a)—Punishment—Deterrent sentence

An offence under the Dangerous Drugs Act is a most serious crime and a deterrent sentence must be imposed to stamp out such crimes. (*Harries, C. J. and Varma, J.*) **NISAR AHMAD v. EMPEROR.**

5 B R 499 = 180 I C 839 = 11 E P. 541 =

40 Cr L J 419 = 1938 P.W.N. 832 =

19 Pat L T. 845 = A I R. 1939 Pat. 172.

DEBTOR AND CREDITOR—Charge—Right of cre-
ditor—Promise by debtor to pay out of particular fund.

The principle is well established that when a debtor promises to the creditor to pay out of a particular fund, the creditor has a charge on the same. If, therefore, by

had already attached the fund. (*Alister and A. Annakar, J.*) **ATA UL-HUQ v. SK. MD. RAMJAN.**

43 C W N. 410.

—Joint creditors—Separate suits—Competency

Where the right of a person to recover certain debt has devolved upon his sons jointly, they can only file one suit against their debtors for recovery of the whole amount. Some of them cannot split the cause of action and sue for their share only on the ground that others did not join with them as co plaintiffs. In that case it would be incumbent upon such of them as are filing the suit to claim the whole amount on behalf of themselves.

—Security furnished by third party for debtor—

Right of creditor to proceed against debtor in case of inability to return security—Rule as to. See **COMPANY—WINDING UP.** 1939 M W N 1193.

DECREE See also C P. CODE.

Amendment.

Consent decree.

Construction

Executability.

Execution

Ex parte decree

Interpretation

Setting aside.

Validity

Variation by consent.

—Amendment—Powers of Court—Limits to—Accrual of interest of third party in property affected by decree—Subsequent amendment long after—Competency of Court. See C. P. CODE, Ss 151 AND 152

41 Bom L R 800.

—Based on admission on point of law by legal practitioner—Binding nature of. See **LEGAL PRACTITIONER—ADMISSION.** 181 I C. 721.

—Consent decree—Essentials.

In a consent decree it should be and generally is stated that it is "by consent." Such a statement is necessary and important because S. 96, C. P. Code, provides that

CUSTOM (Punjab)

unreasonable to suggest that they did not bring with them when they came to Sind their including the customary law of succession customary law would not stand the migration. This customary law excludes rare exceptions in the presence of mal Mahomedan Law does not apply to them are Sunni Mahomedans (*Davis, J.C.*)

AISHA BIBI v. BEGUM BIBI
I L R (1939) Kar 475

(Punjab)—Applicability—Proof—Tribe consulted during preparation of riwaj i am

The fact that a tribe was consulted during the pre-

A I R 1939 Sind 263

CUSTOM (Punjab)

am, which has been established by the Local Govern-

to Rattigan's Digest of customary law (*Davis, J.C.* and *Tyabji, J.*) *AISHA BIBI v. BEGUM BIBI*

I L R (1939) Kar 475 = 185 I C 87 =
A I R 1939 Sind 263

(Punjab)—Riwaj i am—Evidentiary value

Even if *riwaj i am* is not supported by any instances the *riwaj i am* must be looked upon as a strong piece of evidence (*Bhidi, J.*) *JAI NARAIN v. MT. PARSANI*

184 I C 648 (1) = 12 R L 240 = 41 P L R 822 =
A I R 1939 Lah 358

(Punjab)—Riwaj i am—Presumption—If rebutted by instances of other sub divisions of tribe

Custom is a question of fact and not of inference

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793 =
A I R 1939 Lah 259

(Punjab)—Succession—Batadar son—Jalaps

A I R 1939 Lah 560

(Punjab)—Succession—Daughter—Hindu Jats of District Rohtak

According to the customary law of the Hindu Jats of District Rohtak a daughter has no right to inherit (*Skemp, J.*) *MT. MAM KAUR v. MOLIA*

179 I C 824 = 11 R L 639 = 41 P L R 11 =
A I R 1939 Lah 20

(Punjab)—Succession—Daughters—Jodh Rajputs of Chakwal tahsil

Daughters of Jodh Rajputs of Chakwal tahsil are entitled to succeed to their father's non ancestral property in the presence of collaterals of the 4th degree (*Dalip Singh, J.*) *ALLAH DITTA v. MT. TAKHTAN*

183 I C 844 = 12 R L 145 (1) = 41 P L R 770 =
A I R 1939 Lah 261

(Punjab)—Succession—Daughter—Mahrams of Lahore District

According to the *wajib ul arz* of Lahore District,

Lall, JJ.) *KARAM BAKHSI v. MENTAS BIBI*
183 I C 768 = 12 R L 136 = 41 P L R 298 =

A I R 1939 Lah 93
(Punjab)—Succession—Daughters and colla-

that is frequently given to her under customary law for her maintenance and the maintenance of her daughters (*Addison and Ram Lall, JJ.*) *DHARMON v. RAN SINGH*

41 P L R 620 = A I R 1939 Lah 563

CUSTOM (Punjab).

—(Punjab)—*Village or town—Test.*

A place which has got public buildings like a school, dispensary, police station, post-office, which has had a population for 70 years or more of over five thousand,

town and not a vill
RANJIT SINGH v

—(Punjab)—*Widow—Alienation—Powers of*
Awans of Pura Neka

Awans of Pura Neka are governed by custom. According to custom when a widow of a collateral inherits the entire life estate and the property.

(*Bhidi, J.*)
182

—(Punjab)—*Will—Mussalman proprietor in*
Jhelum District—Power of bequest.

A sonless Mussalman proprietor in the Jhelum District has the right to make a will of his ancestral property in favour of his daughters. The initial onus of proving that the will made by their father is valid under the customary law is on the daughters claiming under the will. (*Abdul Rashid, J.*) IMAM ALI v SUGHRAN BEGUM. A I R 1939 Lah 382

DAMAGES. See also (1) CONTRACT ACT, SS 73 AND 75.

(2) INTERESTS

(3) TORT—DAMAGES.

(4) VENDOR AND PURCHASER

—*Right to—Principle underlying—If—by the opposition of another—If an injury*
sense of the term.

Damages are pecuniary compensation awarded to a person for actual injury which is caused by reason of the act or default of a such act or default is a breach of contract or tort. Where a plaintiff alleges that the defendant's actions in trying to prevent the performance of a certain ceremony which the plaintiff proposed to perform, caused him much worry, that so-called worry is nothing but a mental perturbation or emotional excitement caused by the opposition set up by the defendants. It is of too trivial a nature to be regarded as injury in the legal sense of the term. That 'worry' cannot supply the plaintiff with any cause of action for damages (*Niyogi, J.*) DIPCHAND KUNDANMAL v. MANAKCHAND MULTANMAL. I L R (1939) Nag 429 = 182 I C 18 = 11 E N. 504 = 1939 N L J. 181 = A I R. 1939 Nag 154

—Tenant holding over—Measure of damages. See LANDLORD AND TENANT—HOLDING OVER
1939 M L R 219 (Civ)

—Wrongful attachment—Application for compensation under C. P. Code, S 95—Proof of special damage—If essential. See C P. CODE, S 95 50 L W. 640.

—DANGEROUS DRUGS ACT (II OF 1930)—*Procedure—Trial of offence under—Duty to avoid delay*

In a case under the Dangerous Drugs Act, it is essential in the interests of justice that there should be as little delay as possible in the trial. (*Harriot, C. J. and Varma, J.*) NISAR AHMAD v EMPEROR.

5 B E 499 = 180 I C 839 = 11 E P. 541 =

DECREE.

40 Cr. L J. 419 = 1938 P. W. N. 832 =
19 Pat L T. 845 = A I R. 1939 Pat 172.

—S. 14 (a)—*Punishment—Deterrent sentence.*

An offence under the Dangerous Drugs Act is a most

I R. 1939 Pat. 172.
Charge—Right of cre-
of particular fund.

The principle is well established that when a debtor promises to the creditor to pay out of a particular fund, the creditor has a charge on the same. If, therefore, by a consent decree the judgment-debtor gives to the decree-

J J. ATA UL-HUQ v. SK. MD. RAMJAN
43 C W N. 410.

—Creditor holding security for debt—Suit for debt—Set-off of debt against security—Right of debtor—Security furnished by persons other than debtor—Right of debtor to claim set-off See COMPANY—LIQUIDATION (1939) 2 M L J. 325.

—*Joint creditors—Separate suits—Competency.*
Where the right of a person to recover certain debt has devolved upon his sons jointly, they can only file one suit against their debtors for recovery of the whole amount. Some of them cannot split the cause of action and sue for their share only on the ground that others did not join with them as co plaintiffs. In that case it would be incumbent upon such of them as are filing the suit to claim the whole amount on behalf of themselves

—Security furnished by third party for debtor—Right of creditor to proceed against debtor in case of inability to return security—Rule as to. See COMPANY—WINDING UP 1939 M. W. N. 1193.

DECREE See also C P. CODE.

Amendment.
Consent decree.
Construction.
Executability.
Execution.
Ex parte decree
Interpretation
Setting aside
Validity
Variation by consent.

—Amendment—Powers of Court—Limits to—Accrual of interest of third party in property affected by decree—Subsequent amendment long after—Competency of Court. See C. P. CODE, SS 151 AND 152

41 Bom L R. 800.
—Based on admission on point of law by legal practitioner—Binding nature of See LEGAL PRACTITIONER—ADMISSION 181 I C. 721.

—Consent decree—Essentials.
In a consent decree it should be and generally is stated that it is "by consent." Such a statement is necessary and important because S. 96, C. P. Code, provides

DECREE

Meaning of—Right of respondent to costs of appeal

The expression 'Appeal dismissed with costs' can only have one meaning namely that the appellant has

41 Bom L R 949 = A I R 1939 Bom 493

—Construction—Costs—Liability for—Suit on behalf of minor—Dismissal with costs—Absence of direction for payment of costs by next friend—Liability of minor's estate

Where the suit of a minor represented by his next friend is dismissed with costs if the order as to costs does not say that the next friend should pay costs, but provides that the plaintiff do pay the costs of the defendants the estate of the minor is liable to satisfy the costs. Where the plaintiff is a minor if the Court intends the next friend to pay the costs there should be an express direction to that effect. In the absence of such direction the estate of the minor remains liable (*Engineer, J.*) MULCHAND JIVRAJ v D LOW

41 Bom L R 949 = A I R 1939 Bom 493

—Constructs interest until date of bid and set off the date of sale

Where the holder of a decree "until the date of realisation" to bid and set off the date of sale. The words 'date of realisation' cannot be construed as the date on which the money is realised by the decree holder (*Burn and Stodart J.*) RAMABADRA REDDIAR v LAKSHMAMBAL AMMAL

1939 M W N 310 = 49 L W 440 = (1939) 1 M L J 466

—Construction—Mortgage decree—Decree on

O 34 C P Code and is in substance a mortgage

supervise and to take over management in case of mismanagement—Death of one brother without male issue—Daughter's son of latter—Claim to management of deny and endowed property—Sustainability See HINDU LAW—RELIGIOUS ENDOWMENT

41 Bom L R 458

—Executability—Compromise in execution

If under a compromise made during the execution proceedings, the judgment debtor undertakes to transfer a certain land to the decree holder for a portion of the decretal amount and also to charge their house for the payment of the balance in yearly instalments, the compromise does not create a new contract between the

DECREE.

it does not extinguish the original is intended by the compromise is to of payment of the decretal amount C J and Waur J) JAWAL LON v M 41 P L R J & K 104.

Limitation—Starting point—Variation of decree by compromise

Where the effect of a compromise was to convert the original decree into a decree for payment by instalments and where according to the terms of the compromise the decree holder could not put his decree into execution until the judgment debtor had defaulted, in such case the decree holder is entitled to put his decree into execution within 3 years after the first default of the judgment debtor (*Thom C J.*) BHIKI MAL MURARI LAL v KUNDAN LAL

1939 A L J 1051 = 1939 A W R (H C) 870

—Ex parte decree—Suit to set aside—Claim in original suit—If can be attacked as false

In a suit to set aside an *ex parte* decree passed against the plaintiff the latter may attack not only the original suit in which the *ex parte* decree has been obtained as being a fraud from beginning to end, but also the claim itself in that suit as false (*Ghose, J.*) DHARANIDHAR v NITYA GOPAL

43 C W N 1148 =

A I R 1939 Cal 732

—Interpretation—Precedents—Value—Maintenance decree entitling realisation in case of default—

would not be right to be which other decrees were each decree must be cons

Where a maintenance made at a certain date of default in such pay decree-holder would be due out of the person and

property of the judgment debtor it is not a mere declaratory decree but is one capable of enforcement by execution. In cases of decrees for payment of money a condition that the money can be realised by execution is always explicit (*Srivatsava J.*) AINUL HAQ KHAN v MST NAWABAN

183 I C 706 = 12 R O 60 =

1939 O L R 546 = 1939 A W R (O C) 129 =

1939 O W N 768 = 1939 O A 630 =

A I R 1939 Oudh 281

—Fraud—Decree on agreement fraudulently obtained

41 L R 615 = A I R 1939 Bom 493

—Setting aside—Fraud—Proof required

When a suit is instituted to set aside a decree on the ground of fraud, it is obligatory as well as imperative on the plaintiff to allege as well as prove that the decree was obtained by fraud practised upon the Court. General allegations of fraud are insufficient and the plaintiff must particularise the facts upon which fraud is founded. The mere fact that notice was not served is not necessarily a fraud. Unless it is shown that there was a deliberate suppression of summons in order to give effect to a fraudulent scheme the suppression would not be a fraud. A I R 1930 All 427 and A I R 1924 Cal

DECREE

no appeal shall lie from such a decree To constitute

behalf of minor—Dismissal with costs—Absence of direction for payment of costs by next friend—Liability of minor's estate

Where the suit of a minor represented by his next

intends the next friend to pay the costs there should be an express direction to that effect In the absence of such direction the estate of the minor remains liable (*Engineer, J.*) **MULCHAND JIVRAJ v D LOW**

41 Bom LR 621—AIR 1939 Bom 350

Construction—Date of realisation—Award of interest until date of realisation—Decree holder obtaining leave to bid at sale and set off—Right to interest after date of sale

Where the holder of a decree until the date of realisation to bid and set off the date of sale The words 'date of sale' cannot be construed as the date on which the money is realised by the decr
RAMABADRA REDDI

Construction—Mortgage decree—Decree on

Construction—Provision for turns of worship of family deity and management of endowed property by Hindu brothers in partition decree—Condition against alienation—Right given to strangers to supervise and to take over management in case of mismanagement—Death of one brother without male issue—Daughter's son of latter—Claim to management of deity and endowed property—Sustainability See HINDU LAW—RELIGIOUS ENDOWMENT

41 Bom LR 458

Executability—Compromise in execution

If under a compromise made during the execution proceedings, the judgment debtor undertakes to transfer a certain land to the decree holder for a pecuniary decretal amount and also to charge their half payment of the balance in yearly instalments, the compromise does not create a new contract

DECREE.

parties and as such it does not extinguish the original All that is intended by the compromise is to a mode of payment of the decretal amount
Qayoom, C J and Wasir, J. **JAWAL LON v VASA RAM**
41 P L R J & K 104.

Execution—Limitation—Starting point—Variation by compromise

compromise was to convert the decree for payment by instalments the terms of the compromise the put his decree into execution or had defaulted, in such case the to put his decree into execution first default of the judgment

BRIKI MAL MURARI LAL v.

1933 A L J 1051=

1939 A W R (H C) 870

KUNDAN LAL

Ex parte decree—Suit to set aside—Claim in original suit—If can be attacked at false

v NITYA GOPAL

43 C W N 1148=

A I R 1939 Cal 732

Interpretation—Precedents—Value—Maintenance decree entitling realisation in case of default—If a mere declaratory decree

In interpreting a decree it would not be right to be influenced by decisions in which other decrees were interpreted in other cases Each decree must be construed on its own language Where a maintenance decree was made at a certain date of default in such payment decree-holder would be due out of the person and property of the judgment debtor, it is not a mere declaration by execution of money and execution is

HAQ KHAN

12 E O 60=

1939 O L R 546=1939 A W R (O C) 129=

1939 O W N 768=1939 O A 630=

A I R 1939 Oudh 281

Set aside—Fraud—Decree on agreement

ment cannot be put on a higher footing than a consent decree following a fraudulently procured agreement (*Young, C J and Ram Lal J.*) **UMRAO BEGUM v RAHMAT ILLAHI**

I L R (1939) Lah 433=

41 P L R 843=A I R 1939 Lah 439.

Setting aside—Fraud—Proof required

When a suit is instituted to set aside a decree on the ground of fraud, it is obligatory as well as imperative on the plaintiff to allege as well as prove that the decree was obtained by fraud practised upon the Court General allegations of fraud are insufficient and the plaintiff must particularise the facts upon which fraud is founded The mere fact that notice was not served is

DEDICATION

license—a facility provided for the convenience of his neighbours to continue it

and sum

IL 152=

[On appeal from AIR 1939 Lah 12]

Presumption—Private well made available for public use—Punjab

In the Punjab it is considered to be an ethical duty to make a private supply of water available to outsiders

DEED

that the annuity could therefore, be claimed by the might be amongst per stirpes

and not per capita (Mukherjee and Latifur Rahman, JJ) JYOTISH CHANDRA v PRAFULA CHANDRA

Construction—Boundaries and area—Difference between—Rule

When a description in a document is partly correct and partly incorrect and the former part is sufficient to identify the subject matter intended while the latter does not apply to any subject the erroneous part will be

DEED

Cancellation

Construction

Material alteration

Cancellation of—Lease disposed of contrary to terms—Disposition avoided by landlord—Action for cancelling disposition—If necessary

It is true that a *fidei commissum* properly constituted and accepted cannot be revoked. It is no doubt also true that a solemnly executed and duly registered instrument must stand until set aside by a competent Court. Where however a lease has been disposed of contrary to the terms contained in it, and that disposition is void or has been avoided by the landlord there is no room for the application of such a doctrine even in the case of a sale or other disposition for value much less where the disposition is a gift. Since the choice in such a case of avoiding the disposition is with the lessor and not with the lessee or his executor, it cannot be said that the lessee or his executor must bring an action to get the dispositions declared void (Lord Porter) S C JAYAWARDENE v A C JAYAWARDENE

182 I O 770=12 E P O 18=50 L W 87=41 P L R 717=AIR 1939 P O 138 (P O)

Construction—Annuity—Annuity in favour of daughter and her lineal descendants—Some of lineal descendants dying without leaving lineal descendants—Their shares if revert to grantor

A person created an annuity in favour of his daughter and her lineal descendants by a document, the material portion of which was as follows—In my absence you will be entitled to realise this amount together with your sons grandsons and other heirs of your body from my heirs and successors. Then there was a clause providing that none but the lineal descendants of the grantee would be entitled to have this allowance and that the

Construction—Boundaries and area—Discrepancy—Which to prevail

In case of a discrepancy between dimensions and boundaries the area specified within the boundaries will pass, whether it be less or more than the quantity specified (Niyogi J) RAJLU NAIDU v MALAK

ILR (1939) Nag 580=1939 N L J 297=

AIR 1939 Nag 197

Construction—Deed of sale in favour of son at father's instance—Property intended for maintenance of son—If gift

Parents usually make provision for the education and maintenance of their children and they may set aside property for the purpose

Construction—Duty of Court

Construction of a document is a matter of law. When a Court is called upon to construe a document it is the duty of the Judge to construe the terms of the document according to law and come to an independent conclusion of his own as regards the rights and liabilities created by the document. He is not bound to base his conclusion upon matters which are irrelevant in a Court of law (Roberts C J and Dunkley, J) BAKER ALI v AMIR ALI MEAH AIR 1939 Rang 396

Construction—Gift or will—Tests to determine intention how gathered—Surrounding circumstances—Deed styled will—Property to be enjoyed by executant and his wife till death and thereafter to go to named person absolutely—Declaration that he will not incur any debts thereafter—If will or gift

The question whether a particular document is a testamentary disposition or a transfer *inter vivos* depends not upon the mere form of the document but upon the

DEED.

in coming to a conclusion on the point; all these are indications to find out the intention taken singly or cumulatively. Where the expression used in a document which is styled a will is "that the property shall be enjoyed by

after", the intention is that so long as the executant is alive he will be owner, that after the death his wife shall be owner, and thereafter only the property should go to the person named in the manner indicated by him. There is no divestiture of ownership or a transfer of ownership *in presents* in favour of anybody and the only operative portion is intended to take effect only after his death and is testamentary in character. The document is therefore a will and not a gift. The fact that the testator agrees not to incur any debts after the date of the document would not make it other than a will, for such expressions of intention are not uncommon in wills. It is nothing more than a pious declaration of intention to leave the property at the date of death encumbered. The covenant binds him if he contracts debts that would bind him if the document is construed as a gift.

Rao, J.) VEERABHADRAYYA v. SEETHAMMA

1939 M W N 1073

—Construction—Intention of parties—Ascertainment—Surrounding parties—Value of

The intention of the be gathered from the of the surrounding circ *Krishnaswamy Ayya* parties are governed m aid, it may be possible to was aiming at. But care n not over-emphasised. By *(Leach, C. J. and Kri* MAHARAJAH OF VENKA RAO

ILR (1939) 1339 M W N 522—A I R 1939 Mad 614 = (1939) 1 M L J 831

—Construction—Lease or mortgage—Zarpeshgi kabulyat by settled raiyat to landlord—Settlement of land for agricultural purpose at fixed rate for three years accompanied by advance termed *peshgi* money—

Effect—Occupancy rights—If acquired—Subsequent acceptance of *iyara* creating mortgage—If destroys occupancy rights.

In 1913, K who was a settled raiyat of a village executed in favour of the landlord a document described as

cutant who was a cultivator had not sufficient *kasht* land for his maintenance in the *manasa*, that it became necessary for him to take settlement of further *kasht* land for cultivation, that the landlord granted his request for settlement of *kasht* and that he had therefore taken settlement of the lands described in the deed on payment the amount as *peshgi* money for a term of three years commencing from the agricultural year, 1321 *fashl*, at a certain rate of rent per *bagha*. In 1916, K was recorded as an occupancy raiyat in respect of the demised land. In 1917, the landlord executed an *iyara* deed in favour of K, with regard to the lands evidencing an advance of Rs. 200 as *peshgi* for a term of five years, which

DEED.

amounted to a pledge of the land as security for the amount advanced and provided for redemption.

Held, that the *sarpeshgi* of 1913 was only a cultivating lease, as the primary object of the same was to

(*Agarwala, J.*) JAGESHAR SINGH v. ALAKH NARAIN SINGH.

180 I C. 95 = 5 B R 335 =

11 B P. 447 = A I R. 1939 Pat 265.

—Construction—Mortgage or sale. See TRANSFER OF PROPERTY ACT, S. 58 (c)—MORTGAGE OR SALE.

1939 N L J. 544. —Construction—Purusha santhathi—Hindu impartible estate—Settlement deed—Provision for payment of maintenance allowance to junior members for life and after their death to their purusha santhathi—Illegitimate sons—If entitled to claim as purusha santhathi.

The words "purusha santhathi" mean male issue,

impartible estate governed by the Mitakshara School of Hindu Law and his younger brother, provided that the estate should be treated as impartible and

he other e allow- 'es only inferred used the J and

Krishnaswami Ayyangar J.) MAHARAJAH OF VENKATAGIRI v. RAJARAJESWARA RAO

ILR (1939) Mad 622 = 49 L W 717 = 1939 M W N. 522 = A I R 1939 Mad 614 = (1939) 1 M L J. 831.

—Construction—Sale deed purporting to convey land with all rights—Vested remainder possessed by vendor—If passes. See POWER OF ATTORNEY—CONSTRUCTION 50 L W. 192.

—Construction—Sale or mortgage—Deed in form of sale—Amount advanced less than value of property—Parties referred to creditor and debtor—Provision for re-conveyance on payment of amount within 12 years—If sale or mortgage by conditional sale—T. P. Act, S. 58 (c)

A document in the form of a sale deed for Rs. 100, contained a provision that in case "I pay you back the aforesaid sum of Rs. 100 before the completion of 12 years from this day, then you should reconvey to me the aforesaid land." It was found that the consideration, viz., Rs. 100 received, was less than the value of the property, the parties were referred to in the deed as creditor and debtor and it stated that the creditor paid to the debtor Rs. 100.

Held, that the transaction was not a sale, but only a mortgage by way of conditional sale and the redemption clause clearly brought the case within S. 58 (c) of the T. Act. (*Beaman, C. J. and Sen, J.*) RAJARAJ

DEED

JAYARAM v TANUBAI DHONDIBA

41 Bom L R 1251

—Construction—Sale or mortgage—Test to decide—Surrounding circumstances—Sale deed—Provision that if within certain period vendee desires to sell vendor would purchase for same amount—Greater part of property left in hands of vendor for rent—Inference of mortgage—If justified

... a pretence
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... of sale is
... alleging it
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stances that the parties did not mean what they said. A clause in the sale deed to the effect that if within a certain period the vendee desired to sell the property the vendor has a right of purchasing it back at a fixed amount (the amount being the same as that for which the property is sold) would not convert the sale deed into a transaction of mortgage. Nor would the fact that the greater part of the property sold is allowed to continue in the vendor's possession on lease for rent lead to the inference that the transaction is only a mortgage.

for the sale is treated as a continuing debt (*Broomfield & C J and Sen J*) GULABCHAND RAY CHAND v NARAYAN MOTIRAM

41 Bom L R 1227

—Construction—Sale—Sale of house—If includes adjacent chabutra also

A sale of a house does not include a sale of a chabutra adjacent to it when there is no means of ingress and egress from the house on to the platform (*Datt Singh J*) ANUP SINGH v ARJAN LAL

41 P L R 579

—Construction—Settlement deed—Conferment of absolute estate with power to enjoy with all rights—Subsequent clause prohibiting alienation—Effect of *See T P ACT S 11* (1939) 1 M L J 575

—Construction—Subsequent conduct—If relevant
If the words of a document are quite clear it would not be proper to try to come to some other interpretation by reference to the subsequent conduct of the parties (*S K Ghose and Mukherjee JJ*) SURESH SEN v MAHENDRA NATH MUKHERJEA

69 O L J 515 = A I R 193

—Construction—Trust or agency—Deed trans-

DEED

183 I C 821 = 12 R O 67 = 1939 R D 542 = A I R 1939 Oudh 257.

—Construction—Will

A document executed by a person in favour of his daughters which is expressly called a will in the beginning and at the end and which is to come into operation after the date of the death of the executant is in law a will and cannot be regarded as a deed of gift (*Abdul Rashid, J*) IMAM ALI v SUGHRAN BEGUM

A I R 1939 Lah 382

—Construction—Word used in different parts of document—Meaning to be given

Where a word is used in a document in one sense, the same meaning must be given to it where it appears elsewhere

document
it (*Leac*
MAHARA
RAO

—Material Alteration—Effect

A decree cannot be passed on the basis of a document which has been materially altered, unless the alteration.

41 M J) MASSU v.

P L R J & K 25.

—Material alteration—Effect—Document originally constituting conditional promise to pay—Alteration by plaintiff by cutting off part and making it unconditional—Right to succeed on

A plaintiff who sues upon a document in which he has made alterations or interpolations cannot in justice and equity be allowed to adduce secondary evidence of its contents or to succeed upon the same. Where a document, as it originally stood was a conditional promise to pay but the plaintiff cuts off a portion of it so as to make it an unconditional promise to pay he is not entitled to succeed upon it (*Mohammad Noor and Dhavle, JJ*) JANARDAN PARIDA v PRANDHAN DAS.

50 L T 45

—Material alteration—Subsequent affixing of stamp—If amounts to

The subsequent affixing of a stamp on an account in a *bahi* is not a material alteration when the integrity or identity of the contract is not changed by the alteration design, n it (*Tek*

Lah 486

—Material alteration—Test

ever—Significance

43 C W N 191 = A I R 1939 Cal 181.

It is open to the Court to give words (*Zia ul Hasan and Tara JJ*) AMAR KRISH NAZIR HASAN

1939 O L R 563 =

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vis, JJ)

DEFAMATION.

JANARDAN PARIDA v. PRANDHAN DAS.

DEFAMATION See (1)

(2)

(3)

definition of an "agriculturist" in S. 2 of the Dekkhan Agriculturists' Relief Act, as a person who ordinarily engages personally in agricultural labour. But in order that a trader may come within the definition, he must engage in agricultural labour personally to such an extent that it may reasonably be said of him that he has two

agriculture as well as trade. (*Broomfield, v. Sen, J.*) GULABCHAND RAICHAND v. MOTIRAM

was admitted to be an agriculturist and the defendant several contentions, subsequently gave up all his contentions and prayed that accounts may be taken. The Court accordingly appointed a Commissioner who took accounts. The defendant did not seriously object to the accounts taken and the Court accepted the same and passed a decree. The defendant was not examined by the Court. The amount found due according to the

DEKKHAN AGRIC. RELIEF ACT (1879), S. 22

a suit by the mortgagee, and in accordance with the

(1) = 41 Bom L.R. 823 = A.I.R. 1939 Bom. 388.

S. 21—Plea of being agriculturist—It may be raised in execution—Provision in decree that judgment-debtor would not raise such plea—Effect

It is open to an agriculturist to plead his status in execution. Immunity from arrest accrues from his status at the time arrest is sought and even if he was

ime of the decree, he may at the time the decree is sought a decree cannot be

of the judgment-debtor who in a mode con

trary to law. A decree was passed agriculturist, nor

agriculturist in Decree-holder by arrest of the ded that he was

an agriculturist

Held, that in spite of the provisions contained in the decree it was open to the judgment debtor to raise the plea of being agriculturist in execution proceedings. (*Davis, J. C. and Weston, J.*) DHERUMAL v. TEJU MAL.

I.L.R. (1939) Kar 304 = 182 I.C. 696 = 12 E.S. 54 = A.I.R. 1939 Sind 160.

S. 22—Applicability—Conditions—Decree against non-agriculturist—Execution against agriculturist heir—Right to benefit of section.

Under S. 22, as it stands, it matters not what is the status of a defendant when the decree was passed against him. Once it is shown that the property to be attached or sold is the immovable property of an agriculturist not specifically pledged the section applies and

has not been contacted. S. 22 should be read as if

Act, and the non-examination did not vitiate the decision of the Court (2) that when accounts have been

S. 15-D—Scope—Suit for account of mortgage involving the setting aside of sale of equity of redemption—Maintainability

The special relief under S. 15 D of the I Agriculturists' Relief Act which is a special given to an agriculturist cannot be granted which, though not in form, is in reality a suit as an alienation. Such a suit for an account mortgage by the mortgagor is not maintainable under S. 15 D, when it requires the setting aside of the sale of the equity of redemption (*Lotur, J.*) KRISHNA

tom 419. rigor— mortgage

Agricul account of if it were

S. 22—Appellate Court—Power of to give

S. 22—Surety bond—Statement that if amount of bond was not satisfied surety's property would be liable—Mortgage or charge if created.

The marginal note to S. 22 refers to property specifically pledged. The marginal note however is not part of the Act, but so long as the word "specifically" is emphasized it makes little or no difference whether immovable property is specifically mortgaged or charged. The deeds have to be properly stamped and registered, and a Court is not to construe a surety bond with an

DEKKHAN AGRIC REL ACT (1879), S 63-A

eight anna stamp as constituting a specific mortgage or charge upon immovable property. A surety bond provided if the amount of the bond according to its terms is not satisfied from the surety, I my property, and my heirs are and shall remain liable." This was followed by a statement that the surety had a large well known building which was without incumbrance.

Held, that this general statement occurring in a bond of this nature could not fairly be construed as intended to create a mortgage or charge. It created only a personal liability. The statement meant nothing more than evidence of the surety's solvency. (*Davis J C and Tyabji J*) **WAZIR BEGUM v MT DADAN**

ILR (1939) Kar 409=180 IC 980=11 RS 199=AIR 1939 Sind 68

S 63 A—Applicability

S 63 A of the Dekkhan Agriculturists' Relief Act only applies where there is something on the face of the document to show that it is a document to which the section relates. The section does not apply if there is nothing on the face of the document in question to establish the fact that the executant is an agriculturist. (*Beaumont C J and Sen J*) **RAJARAM JAYARAM v TANUBAI DHONDIBA**

41 Bom LR 1251

S 71—Applicability—Adjustment—Suit to file suits—Benefit

Adjustment of Act applies. A suit for adjustment of benefit of S 71 can be claimed. A suit for filing an adjustment of benefit of the parties is described as an adjustment of benefit of the parties as a proceeding under decretal order the defendants a S 15 B (*Lokur J*) **NARAYAN DATTATRAYA v MURLIDHAR PUNAMCHAND**

183 IC 122=12 RB 100=41 Bom LR

AIR 1939 Bom

S 72—Applicability—Registered mortgage agriculturist—Suit on by mortgagee—Claim to for sale and for personal decree—Application for personal decree—Limitation—Lim Act, Art 116.

In a suit by a mortgagee upon a registered deed of mortgage executed by an agriculturist containing a personal covenant claiming a decree for sale and for a personal decree in case the sale proceeds were found insufficient, the suit so far as the decree is concerned, falls under S 72 of the Act which gives 12 y Limitation Act does not apply to not confined only to suits which fall of that Act (*Lokur J*) **GURU MADWALAPPA**

41 Bom LR 832= AIR 1939 Bom 392

DIVORCE—Alimony—Absence of dum sola et casta clause in the decrees—Subsequent unchastity—If a ground for varying decree

The *dum sola et casta* clause must be inserted in an order granting alimony it will never be inferred. If there is no such clause in the order granting alimony to the wife the order could not be the ground of subsequent unchastity. (*Allsop J J*) **CHANDLER v MR**

1939 A LJ 572=1939 AIR 1939 All 696

EVIDENCE—ADMISSIBILITY

1939 AWR (HC) 420

DIVORCE ACT (1869), S 19**DIVORCE ACT (VI OF 1869), Ss 10 and 14—Divorce—Discretion of Court—Misconduct of petitioner.**

Where the petitioner the husband had also been guilty of adultery, it is for the Court to consider whether it should refuse to give him a decree or should exercise its discretion in his favour. The discretion should no doubt be exercised with due care and strictness. Where there was nothing to suggest that the petitioner was a man of loose and profligate character and where the parties were living apart and the respondent had given birth to an illegitimate child and there was no collusion or connivance between them, in such a case it was held that a decree for dissolution of marriage should not be refused upon the ground of the petitioners misconduct. (*Allsop J*) **ERNEST LIONEL DOUTRE v ANNE RUTH DOUTRE**

1939 A LJ 478=AIR 1939 All 522

Ss 10 and 22—Petition for dissolution of marriage—Case made out only for judicial separation—Petition dismissed without considering question of separation—Review if competent

If on a petition by the wife for dissolution of her marriage, a case for judicial separation alone is made out and not for dissolution the Court can grant a decree for judicial separation. If it dismisses the petition without considering the question of judicial separation, a review application is competent. (*Aldison and Aam Lal, JJ*) **GLORIOUS JACOB v MRS ROSIE JACOB**

184 IC 816=41 PLR 337= AIR 1939 Lah 404

S 14—Adultery committed by respondent while he is High Court in England

decree based on adultery committed by the respondent after the presentation of a

S 14—Condonation of adultery—If cancelled by

(*Sharpe, J*) **VIOLA DUNCAN v GEORGE DUNCAN**

1939 Rang LR 267=184 IC 801= AIR 1939 Rang 352

S 14—Divorce—Discretion—Misconduct of petitioner—Effect of See DIVORCE ACT Ss 10 AND 14—DIVORCE—DISCRETION 1939 AWR (HC) 420**Ss 19 and 10—Marriage between Mahomedan husband and Roman Catholic wife—Wife's consent**

prior to and also at the time of their marriage the husband who was a Mahomedan represented to the wife that he was a Roman Catholic and the wife, who was a Roman Catholic would not have married him if she had

DIVORCE ACT (1869), S 36

known that he was a Mahomedan, the marriage is void, the wife's consent to it having been obtained by fraud. The High Court has accordingly power to annul that marriage on the ground of fraud under S. 19 of the Act. (*AcNair, J.*) **THEERISA OSMAN AYKUT v MUSTAFA OSMAN AYKUT.** I.L.R. (1939) 2 Cal 60

—S 36—'Net income'—Meaning.

Net income merely means income after allowing for the cost of collection, income tax and similar deductions. Net income does not mean any sum which is left over after the husband has spent all that he considers necessary for his maintenance. (*Sen J.*) **LOBO v LOBO.** A.I.R. 1939 Cal 753

—S 37—Arrears of alimony and costs—Order for payment in instalments—Priority

Although the arrears of alimony and costs are ordinarily payable at once, the Court may order payment in monthly instalments. (*Adair and Re*) **GLORIOUS JACOB v MRS ROSIE JACOB.** 184 I.C. 816 = 41 P.L.R. 337 = A.I.R.

—S 43—Custody of children—Order for—Power of Court—Limits to

The power of Court to make any order for the custody of a minor child, the marriage of whose parent is the subject of a suit for obtaining a dissolution of marriage, is limited to making an order in which such child only so long as that child remain within the meaning of the Divorce Act. The proper practice to be followed in Burma is to limit the order for custody to the age which is fixed by S. 3 (5) of the Act and also to direct that the person to whom is given the custody should not remove the child outside the jurisdiction of the Court without its sanction. (*Sharpe, J.*) **VIOLA DUNCAN v. GEORGE DUNCAN.** 1939 Rang. L.R. 267 =

184 I.C. 801 = A.I.R. 1939 Rang 352

DYING DECLARATION. See EVIDENCE ACT, S 32 (1).**EASEMENT**

- Acquisition
- Customary right
- Grant
- Light and air.
- Natural right.
- Right of privacy
- Right of way
- Right to claim

—Acquisition by prescription—Conditions—Continuous assertion of right to easement during whole prescriptive period—Necessity to prove—Open exercise of rights establishing easement—Sufficiency

It is not the law that a person cannot acquire an easement

EASEMENT.

—Acquisition—Proof—Animus in exercise of right—Necessity—Claim for right of easement—Evidence showing plaintiff to be owner of land—Effect

In order that a plaintiff should prove the right to an easement, he must show the exercise of that right with the necessary animus throughout the statutory period. The question of animus is a question of fact to be proved by evidence. Though a plaintiff in a case to establish right of easement may in his pleadings raise inconsistent pleas, yet if in the witness box he leads evidence to show that he is the owner of the land over the statutory period or some part of it, he clearly destroys his case which is dependent upon his showing that he is not the owner of the land over the statutory period and has not claimed the rights of owner but the exercise of the rights over the land of another. (*Sen J.*) **is fatal**
KHAN

961 =
11 R.S. 248 = A.I.R. 1939 Sind 110.

—Customary right—Villagers' right to collect fuel and burn Holi on the land of the defendant—If

locality claimed a
the land of the
Holi and per-

form some ceremonies, there and where such right is proved to have been exercised from time immemorial, it was held that the easement was not unreasonable and could be recognized by the Courts. (*Bennet and Verma, J.J.*) **LAKHMI CHAND v. MOTI LAL.**

180 I.C. 233 = 11 E.A. 432 =
1938 A.L.J. 1243 = 1939 A.W.R. (H.C.) 4 =
A.I.R. 1939 All. 165.

—Extinction—Unity of possession.

Where the ownership of the two estates is not co-extensive and equal in validity—the dominant tenement being held for a term of years only and the servient tenement in full right of ownership—the acquisition of a right of way is not extinguished but is only suspended by unity of possession of the dominant and servient tenements. 50 Cal. 356 Rel on. (*Mosely, J.*) **TAN SUI SHAN v. U PO NYUN.** A.I.R. 1939 Rang 421.

—Grant—Reservation of right to revoke—Nature of right—If assignable

Where a person grants an easement of a right of way over his land to another and expressly reserves to himself the right to revoke it under certain conditions within a definite period and on payment of a particular amount, it is a reservation made for the beneficial enjoyment of his land. It is in the nature of a covenant

entirely sufficient to establish an easement, *prima facie*, he is entitled to the easement, and it is not necessary to show that during the whole of the prescriptive period he was consciously asserting a right to an easement. A right to an easement by prescription cannot be defeated merely by the fact that the claimant was not aware of the right. (*Sen J.*) **RAU R.**

In the case of a suit relating to an easement of light and air, reference to reported cases is necessarily of little value, because, whether or not the disturbance of an easement of light and air amounts to a nuisance, depends entirely on the facts and circumstances of each particular case. (*Sen J.*)

DEKKHAN AGRICULTURE ACT (1879), S 63-A

eight anna stamp as constituting a special charge upon immovable property. A voided if the amount of the bond terms is not satisfied from the surety.

create a mortgage or charge. It created only a personal liability. The statement meant nothing more than evidence of the surety's solvency (*Davis J C and Tyabji J*) **WAZIR BEGUM v MT DADAN**
ILR (1939) Kar 409=180 IC 980=
11 RS 199=AIR 1939 Sind 68

—S 63 A—Applicability

S 63 A of the Dekkhan Agriculturists' Relief Act only applies where there is something on the face of the document to show that it is a document to which the section relates. The section does not apply if there is nothing on the face of the document in question to establish the fact that the executant is an agriculturist (*Beaumont C J and Sen J*) **RAJARAM JAYARAM v TANUBAI DHONDIBA**
41 Bom LR 1251

—S 71—Applicability—Adjustment—Suit to file award—Parties not described as agriculturists—Benefit of S 71—If available

S 71 of the Dekkhan Agriculturists' Relief Act applies only to payments but not to an adjustment. An adjustment not made in any proceeding under the Act is not one in respect of which the benefit of S 71 can be claimed. A suit for filing an award in which neither of the parties is described as an agriculturist cannot be regarded as a proceeding under the Act although in the decretal order the defendants are given the benefit of S 15 B (*Lokur J*) **NARAYAN DATTATRAYA v MURLIDHAR PUNAVCHAND**
183 IC
12 RB 100 41 Bom LR
AIR 1939 Bom

—S 72—Applicability—Registered mortgage agriculturist—Suit on by mortgagee—Claim to for sale and for personal decree—Application for personal decree—Limitation—Lim Act, Art 116

In a suit by a mortgagee upon a registered deed of mortgage executed by an agriculturist containing a personal covenant claiming a decree for sale and for a personal decree in case the sale proceeds were found insufficient the suit so far as the claim for a personal decree is concerned, falls under S 3 (w) of the Dekkhan Agriculturists' Relief Act, and is therefore governed by S 72 of the Act which gives 12 years. Art 116 of the Limitation Act does not apply to that claim. S 72 is not confined only to suits which fall only under cl 3 (w) of that Act (*Lokur J*) **GURAPPA BHIMANNA v MADWALAPPA**
41 Bom LR 832=
AIR 1939 Bom 392

DIVORCE—Alimony—Absence of dum sola et casta clause in the decree—Subsequent unchastity—If a ground for varying decree

The *dum sola et casta* clause must be inserted in an order granting alimony. It will never be inferred. If there is no such clause in the order granting alimony to the wife the order could not be varied or discharged on the ground of subsequent unchastity (*Collyster and Allsop JJ*) **CHANDLER v MRS A CHANDLER**
1939 ALJ 572=1939 A WE (HC) 555=

—Evidence as to EVIDENCE—ADMISSIBLE**DIVORCE ACT (1869), S 19**

DIVORCE ACT (1869), S 19

raised with due care and strictness. Where thing to suggest that the petitioner was a and profligate character and where the parties were living apart and the respondent had given birth to an illegitimate child and there was no collusion or connivance between them in such a case it was held that a decree for dissolution of marriage

—Ss 10 and 22—Petition for dissolution of marriage—Case made out only for judicial separation—Petition dismissed without considering question of separation—Review if competent

If on a petition by the wife for dissolution of her marriage, a case for judicial separation alone is made out and not for dissolution the Court can grant a decree for judicial separation. If it dismisses the petition without considering the question of judicial separation, a review application is competent (*Addison and Ram Lal JJ*) **GLORIOUS JACOB v MRS POSIE JACOB**
184 IC 816=41 PLR 337=
AIR 1939 Lah 404

—S 14—Adultery committed by respondent subsequent to petition—If can be basis of decree—Procedure to be adopted by petitioner

Courts in Burma like the High Court in England, are entitled to pronounce a decree based on adultery committed by the respondent after the presentation of a

petition on the respondent and on all persons affected by it. This is the English practice which applies equally in Burma (*Sharpe, J*) **VIOLA DUNCAN v GEORGE DUNCAN**
1939 Rang LR 267=
184 IC 801=AIR 1939 Rang 352

—S 14—Condonation of adultery—If cancelled by subsequent cruelty

Upon the commission of a subsequent matrimonial offence the forgiveness of the prior offence is cancelled and the old cause of complaint is revived furthermore, the subsequent offence need not necessarily be *ejusdem generis* as the original offence. Subsequent cruelty would therefore revive previously condoned adultery (*Sharpe, J*) **VIOLA DUNCAN v GEORGE DUNCAN**
1939 Rang LR 267=184 IC 801=
AIR 1939 Rang 352

—S 14—Divorce—Discretion—Misconduct of petitioner—Effect of Ss DIVORCE ACT, Ss 10 AND 14—DIVORCE—DISCRETION 1939 A WE (HC) 420

—Ss 19 and 10—Marriage between Mahomedan husband and Roman Catholic wife—Wife's consent obtained by fraud—Power of Court to annul marriage

The policy of the Divorce Act does not contemplate a valid marriage between a Christian and a person professing a religion which is not monogamous. Where

DIVORCE ACT (1869), S. 36.

known that he was a Mahomedan, the marriage is void, the wife's consent to it having been obtained by fraud. The High Court has accordingly power to annul that

Net income merely means income after allowing for the cost of collection, income tax and similar deductions. Net income does not mean any sum which is left over after the husband has spent all that he considers necessary for his maintenance. (*See* *J*) LOBO *v* LOBO, AIR 1939 Cal 753

—S. 37—Arrears of alimony and costs—Order for payment instalments—Propriety

Although the arrears of alimony and costs are ordinarily payable at once, the Court may, having regard to the poverty of the parties, make them payable in monthly instalments (*Adison and Ram Lal*, GLORIOUS JACOB *v* MRS. ROSIE JACOB, 184 IC 816—41 P.L.R. 337—AIR 1939 Lah. . .

—S. 43—Custody of children—Order for—Power of Court—Limits to

The power of Court to make any order for the custody of a minor child, the marriage of whose parents is the subject of a suit for obtaining a dissolution of that marriage, is limited to making an order in respect of such child only so long as that child remains a minor child within the meaning of the Divorce Act. The proper practice to be followed in Burma is to limit the order for custody to the age which is fixed by S. 3 (5) of the Act and also to direct that the person to whom is given the custody should not remove the child outside the jurisdiction of the Court without its sanction (*Sharpe, J*) VIOLA DUNCAN *v* GEORGE DUNCAN, 1939 Rang L.R. 267=

184 IC 801—AIR 1939 Rang 352

DYING DECLARATION. See EVIDENCE ACT, S. 32 (1).

EASEMENT.

Acquisition.

Customary right.

Grant

Light and air

Natural right.

Right of privacy.

Right of way

Right to claim

—Acquisition by prescription—Conditions—Conscious assertion of right to easement during whole prescriptive period—Necessity to prove—Open exercise

EASEMENT.

—Acquisition—Proof—Animus in exercise of right—Necessity—Claim for right of easement—Evidence showing plaintiff to be owner of land—Effect

It should prove the right to an the exercise of that right with brought the statutory period.

It is a question of fact to be proved by evidence. Though a plaintiff in a case to establish right of easement may in his pleadings raise inconsistent pleas, yet if in the witness box he leads evidence to show that he is the owner of the land over the statutory period or some part of it, he clearly destroys his case which is dependent upon his showing that he is not the owner of the land over the statutory period and has not claimed the rights of owner but the exercise of the rights over the land of another. In such a case the plaintiff must is fatal

KHAN.

961= 11 R.S. 248—AIR 1939 Sind 110.

—Customary right—Villagers' right to collect fuel and burn Holi on the land of the defendant—If can be recognised—If unreasonable.

Where the residents of a particular locality claimed a customary right of easement to go over the land of the defendant, to collect firewood and burn Holi; and perform some ceremonies, there and where such right is proved to have been exercised from time immemorial, it was held that the easement was not unreasonable and could be recognized by the Courts (*Bennet and Verma, J.J.*) LAKHMICHAND *v* MOTI LAL.

180 IC 233=11 R.A. 432= 1938 A.L.J. 1243=1939 A.W.R. (H.C.) 4= AIR 1939 All. 165.

—Extinction—Unity of possession.

Where the ownership of the two estates is not co-extensive and equal in validity—the dominant tenement being held for a term of years only and the servient tenement in full right of ownership—the acquisition of a right of way is not extinguished but is only suspended by unity of possession of the dominant and servient tenements 50 Cal 356 Rel. on. (*Mosely J*) TAN SIT SHAN *v* U PO NYUN, AIR 1939 Rang 421.

—Grant—Reservation of right to revoke—Nature of right—If assignable

Where a person grants an easement of a right of way over his land to another and expressly reserves to himself the right to revoke it under certain conditions within a definite period and on payment of a particular

claiming an easement. (*Bisram, C.J. and Sen, J.*) RAU RAMA *v* TUKARAM, I.L.R. (1939) Bom 140= 183 IC 139=12 R.B. 59=41 Bom L.R. 168= AIR 1939 Bom 149.

Easements Act in those provinces to which made applicable, it is of little practical the provisions of the English statute and English cases, in a matter relating to

EASEMENT

J) ABDULLAH HAROON v MUNICIPAL CORPORATION, KARACHI 179 IC 884=11 RS 157=

AIR 1939 Sind 39

—Light and air—Plaintiff seeking injunction—

ed, in a proper case to order an enquiry as to damages, even though it holds that the plaintiff is not entitled to injunction. No such enquiry can however be ordered when the plaintiff has not proved any damage. (Lobo J) ABDULLAH HAROON v MUNICIPAL CORPORATION KARACHI 179 IC 884=11 RS 157=

—Light and air—
heritage—
damage

The owner of a dominant heritage has no absolute right to the access of light and air to windows and apertures and is not entitled to compensation by way of injunction or otherwise for the disturbance of an easement unless he has sustained substantial damage, that substantial damage must be a diminution of the value of the dominant heritage, or of the utility thereof, material interference with the physical comfort of persons using the dominant heritage a material interference with the use of the dominant heritage in as beneficial a manner as it had been used before such interference. An owner of ancient lights is entitled to sufficient light according to the ordinary notions of mankind for the comfortable use and enjoyment of his house as a dwelling house, if it is a dwelling house or for the benefit of the house if it is a warehouse or place of business. So also to constitute

land—Nature and extent of

There is a natural right of drainage from higher lands to lower lands of water flowing in the usual

let it out in a channel or through apertures in the band provided only that he does not do so to hurt or damage the lower land in other words the exercise of

shed or water which has come artificially
(Abdul Ghani and Singaravelu Mudaliar, IANUMANTHAPPA v SHADAKSHRAPPA

17 Mys LJ 123=41 Mys HC

—Nature of right—Enjoyment for less than statutory period—If can confer right of action against trespasser.

EASEMENTS ACT (1882), S 4

Easements are not capable of being possessed and unless such rights have ripened into prescriptive rights recognized by law, mere enjoyment for anything less than the statutory period does not confer on the enjoyer a right of action.

inter

na, J)

677=

1939 A WR (CC) 261=

1939 OWN 992=1939 OA 800

—Right of privacy

It is the legal right of a person to open a door or an aperture in his own wall and that any person who suffers

has equally a

on his own

pt, of course,

been acquired

RAJ: LADU

1939 M L R 150 (Civ)

RAM

—Right of way—Long user—Presumption of legal origin for the right

Where a passage has been found to have been used openly uninterruptedly and peaceably for about 50 years, it can be presumed that the right had a legal origin and that those using it had a right to use it. (Thom CJ and Ganga Nath J) RAM KALI v MUNNA LAL

184 IC 620 12 RA 260=1939 ALJ 821=

1939 A WR (HC) 515=1939 RD 390=

AIR 1939 All 586

—Right to claim—Assertion of personal claim against owner—If precludes claim for easement

It is true that a person who enjoys a right under the

for specific performance on the ground of sale alleged to have affecting the land in respect of which

is claimed by him

ing the easement,

al right against the

of a right in the

right which is remote

RAJLU NAIDU v

0=1939 N L J 297

=AIR 1939 Nag 197

EASEMENTS ACT (V OF 1882) S 1—Appli

reference to another building at a different place

Where the easement of a right of way in respect of a stair case existed for the benefit of the dominant tenement and later on a staircase but for the easement altogether, the place is claimed of it of way was not

—S 4—Right of way—Tenant of one land—If can acquire upon another land of his own

EASEMENTS ACT (1882), S. 12

EASEMENTS ACT (1882), S. 18.

Where a common third person is a tenant of both the

that the defendant was not liable to keep the ground

—S 15—*Right of way—Constructive enjoyment—*
It can be presumed—Servitude acquired for one purpose
If can be used for another.

The presumption of constructive enjoyment can no more be made in favour of a person acquiring easement by prescription than the presumption of constructive possession made in favour of a trespasser acquiring prescriptive title. If there is a grant, it is construed against the grantor but in case of prescriptive right, its extent must be measured and determined by the accustomed user. It is on this principle that a servitude acquired for one purpose cannot lawfully be used for another. Hence where a prescription acquired a right of way on for himself, his servants and carts, the cannot be presumed to include the passage. Nor can such a presumption be based on instances that the houses occupied by the one time belonged to a common owner was necessary for enjoying the tenement chased by the person claiming easement, it of way is not a continuous and appa-

The case therefore cannot fall within 13 (f), Easements Act. Nor can it be presumed that the way is for all purposes on the ground

—Ss 12 and 15—*Lessee of land erecting house thereon—Acquisition of easements by—Benefit of—Right of owner of site.*

In the case of a lessee of a site, who is also the owner of the house which he has built thereon, so far as the

CORPORATION, KARACHI.
 11 R S

—S 13—*Easement of*
Requisites to be proved

In order to claim a right necessity, it must be shown

An easement of necessity is one where property retained upon the severance of all, it is not one which is merely necessary

—S 15—*Right of way—Long user—Presumption.*
 It is no doubt incumbent on the person claiming

brothers, one of whom got the ground floor and the other

joined to so effect for which time full
 Where the plaintiffs as owners of cattle living in a large have been accustomed for a long time to make offerings when their cattle are housed and those offerings are made at a 'ban' in a room, it does constitute a right of way to continue to make those offerings.
(See, JJ) KANHAI SINGH v. BASDOO

EASEMENT

J) ABDULLAH HAROON v MUNICIPAL CORPORATION, KARACHI 179 I C 884=11 R S 157=

A I R 1939 Sind 39

—Light and air—Plaintiff seeking injunction—Power of Court to direct enquiry as to damages

Where in a suit relating to an easement of light and air the plaintiff seeks an injunction restraining the defendant from interfering with his right the Court is entitled in a proper case to order an enquiry as to damages even though it holds that the plaintiff is not entitled to injunction. No such enquiry can however be ordered when the plaintiff has not proved any damage. (*Lobo J*)

J) ABDULLAH HAROON v MUNICIPAL CORPORATION KARACHI 179 I C 884=11 R S 157=

damage

The owner of a dominant heritage has no absolute

tantial damage must be a diminution of the value of the dominant heritage or of the utility thereof material interference with the physical comfort of persons using the dominant heritage a material interference with the use of the dominant heritage in as beneficial a manner as it had been used before such interference. An owner of ancient lights is entitled to sufficient light according

land—Nature and extent of

There is a natural right of drainage from higher lands to lower lands of water flowing in the usual

country but also to lands in towns. The owner of the higher land can collect the water and let it out in a channel or band provided only that it does not cause damage to the lower land. The right should not be made more burdensome to the owner of the lower land than it was before. The right of the owner of the higher land to discharge water which was foregone to the land for use by procuring a pipe supply or draining another shed or water which has come artificially. (*Abdul Ghani and Singaravelu Mudaliar*)

HANUMANTHAPPA v SHADAKSHRAPPA

17 Mys L J 123=44 Mys H C

—Nature of right—Enjoyment for lesser statutory period—If can confer right of action against trespasser

EASEMENTS ACT (1882) S 4

Easements are not capable of being possessed and unless such rights have ripened into prescriptive rights recognized by law mere enjoyment for anything less than the statutory period does not confer on the enjoyer a right to maintain an action against a trespasser interfering with his enjoyment. (*Radha Krishna J*)

MADAROO KHAN v MUNAWAR KHAN

184 I C 870=1939 O L R 677=

1939 A W R (C C) 261=

1939 O W N 992=1939 O A 800

—Right of privacy

It is the legal right of a person to open a door or an aperture in his own wall and that any person who suffers any discomfort or inconvenience thereby has equally a right to sue for the same. The right has been acquired on his own account of course.

as an easement. (*Kanjilal J*) UFORAJ v LADU RAM 1939 M L R 150 (Civ)

—Right of privacy—Law of easement—Right of privacy

it can be presumed that the right had a legal origin and that those using it had a right to use it. (*Thom C J*)

and Ganga Nath J) RAM KALI v MUNNA LAL

184 I C 620=12 RA 260=1939 A L J 821=

1939 A W R (H C) 515=1939 R D 390=

A I R 1939 All 586

—Right to claim—Assertion of personal claim

had previously been a right for specific performance on sale alleged to have been the land in respect of which the claim was made by him. The claimant was claiming the easement of light against the defendant. The right of a right in the

MALAN J

EASEMENTS ACT (V OF 1882) S 1—Appl

does not apply to a right of way. The Act while so far as it relates to easements. (*Masely*)

1939 Rang 421

—S 4—Right of way—Easement with reference to a right of way

act of a tenant

—S 4—Right of way—Tenant of one land—If can acquire upon another land of his own

EASEMENTS ACT (1882), S. 12

Although possession of the tenant is the possession of the landlord, still a tenant of one land cannot acquire an easement over another land.

period during which the said third person was a tenant of the defendant and the plaintiff should be excluded from the period claims to have
Verma, JJ)
PRASAD.

1939.

A.I.R. 1939 All. 339

—Ss 12 and 15—Lessee of land erecting house thereon—Acquisition of easements by—Benefit of—Right of owner of site.

In the case of a lessee of a site, who is also the owner of the house which he has built thereon, so far as the

session of the land which is his site, and he would acquire on behalf and for the benefit of the owner of the site (Ibrahim, J.) ARDUILA HAROON v MUNICIPAL

at all. It is not enough, if it is shown that it is merely necessary to the reasonable enjoyment of the property (Dhale, J.) RAMANANDAN MARWARI v. RAMJI BAN MARWARI 178 IC 803=5 BR 140=

11 R P 296=

—S 13—Easement of necessity

An easement of necessity is property retained upon the sever all; it is not one which is merel sonable enjoyment of that pr RAJLU NAIDU v. MALAK. I

1939 N L J. 297=

Liability of owner of ground floor—Extent of.

A house was originally partitioned between two

EASEMENTS ACT (1882), S. 18.

that the defendant was not liable to keep the ground

—S 15—Right of way—Constructive enjoyment—It can be presumed—Servitude acquired for one purpose—If can be used for another.

The presumption of constructive enjoyment can no more be made in favour of a person acquiring easement by prescription than the presumption of constructive possession made in favour of a trespasser acquiring prescriptive title. If there is a grant, it is construed against the grantor but in case of prescriptive right, its extent must be measured and determined by the accustomed user. It is on this principle that a servitude acquired for one purpose cannot lawfully be used for another. Hence where a prescription acquired a right of way on for himself, his servants and carts, the cannot be presumed to include the passage. Nor can such a presumption be based

ses occupied by the to a common owner jying the tenement claiming easement. Moreover, right of way is not a continuous and appa- rent easement. The case therefore cannot fall within the scope of S 15(2).
Moreover, right of way is not a continuous and appa- rent easement. The case therefore cannot fall within the scope of S 15(2).
Moreover, right of way is not a continuous and appa- rent easement. The case therefore cannot fall within the scope of S 15(2).

—S 15—Right of way—Long user—Presumption.

It is no doubt incumbent on the person claiming easement to establish that his user was as of right but

license, it must be presumed that his user was as of right (Nigori, J.) RAJLU NAIDU v. MALAK.

11 R 1939 Nag. 580=1939 N L J. 297=

A I E. 1939 Nag. 197.

—S 18—Applicability—Right to make offerings at a particular place—Owners of cattle of a village accus-

EASEMENT

J) ABDULLAH HAROON v MUNICIPAL CORPORATION, KARACHI 179 IC 884=11 R S 157=

AIR 1939 Sind 39

—Light and air—Plaintiff seeking injunction—

ed in a proper case to order an enquiry as to damages even though it holds that the plaintiff is not entitled to injunction. No such enquiry can however be ordered when the plaintiff has not proved any damage (Lobb J) ABDULLA HAROON v MUNICIPAL CORPORATION KARACHI 179 IC 884=11 R S 157=

AIR 1939 Sind 39

—Light and air—Right of owner of dominant heritage—Infringement—What constitutes—Substantial damage

The owner of a dominant heritage has no absolute right to the access of light and air to windows and apertures and is not entitled to compensation by way of in

interference with the physical comfort of persons using the dominant heritage a material interference with the use of the dominant heritage in as beneficial a manner

place of business. So also to constitute an infringement of an easement of light and air there must be a substan

of—Owner of former to drain off water on to lower land—Nature and extent of

There is a natural right of drainage from higher lands to lower lands of water flowing in the usual

The owner of the

HANUMANTHAPPA v SHADAKSHRAPPA 17 Mys LJ 123=44 Mys HCR 105

—Nature of right—Enjoyment for lesser than statutory period—If can confer right of action against trespasser

EASEMENTS ACT (1882), S 4

Easements are not capable of being possessed and unless such rights have ripened into prescriptive rights recognized by law mere enjoyment for anything less than the statutory period does not confer on the enjoyer

1939 AWR (CC) 261= 1939 OWN 992=1939 OA 800

—Right of privacy

It is the legal right of a person to open a door or an aperture in his own wall and that any person who causes any discomfort or inconvenience thereby has equally a right to raise a wall or other obstruction on his own land against such door or aperture except of course where the right to open them has already been acquired as an easement (Kanjitmal, J) DFORAJI LADU RAM 1939 M LR 150 (CI V)

—Right of way—Long user—Presumption of legal origin for the right

Where a passage has been found to have been used

and Ganga Nat

184 IC

1939

acquired in respect of others is a right in one's own But the mere fact that the person claiming easement had previously filed a suit for specific performance on

alleged to have ing the land in res is claimed by him ming the easement, al right against the r of a right in the ight which is remote RAJLU NAIDU v

MALAK ILR (1939) Nag 580=1939 N LJ 297 =AIR 1939 Nag 197

EASEMENTS ACT (V OF 1882) S 1—Appli

s Act does not apply to regard to that Act while to an easement (Mostly, O NVUN

AIR 1939 Rang 421

—S 4—Right of way—Easement with reference to med with

te spect of a ant tene later on a but for together claimed was not (Bennet RADHAY

LAL 180 IC 621=11 R A 486= 1939 AWR (HC) 141=1939 A LJ 1238=

AIR 1934 All 194

—S 4—Right of way—Tenant of one land—If can acquire upon another land of his own

EASEMENTS ACT (1882), S 12

Although possession of the tenant is the possession of

EASEMENTS ACT (1882), S 18.

that the defendant was not liable to keep the ground

putation—Period of tenant, if to be excluded

Where a common third person is a tenant of both the

no natural existence (Beaumont, L.J. and Langbecker, J.)

claims to have enjoyed the right of way (see also *Vermas, JJ*) **NASIR UDDIN HAIDER v. RAGHUBIR PRASAD.** 182 I.C. 452=12 B.A. 22=

1939 A.L.J. 68=1939 A.W.R. (H.C.) 129= A.I.R. 1939 All. 339

—Ss 12 and 15—Lessee of land erecting house thereon—Acquisition of easements by—Benefit of—Right of owner of site.

In the case of a lessee of a site, who is also the owner of the house which he has built thereon, so far as the use of light or air or support for his building is concerned, he is an owner of the building and may, under the first

t of way—Constructive enjoyment—
—Servitude acquired for one purpose
r another.

The presumption of constructive enjoyment can no more be made in favour of a person acquiring easement by prescription than the presumption of constructive possession made in favour of a trespasser acquiring prescriptive title. If there is a grant, it is construed against the grantor but in case of prescriptive right, its extent must be measured and determined by the accustomed user. It is on this principle that a servitude acquired for one purpose cannot lawfully be used for another. Hence where a person has by prescription acquired a right of way on other's land for himself, his servants and carts, the right of way cannot be presumed to include the passage

RAJLU NAIDU v. MALAK. I.L.R. 1939 Nag. 580=

1939 N.L.J. 297=A.I.R. 1939 Nag. 197.

—Ss 13, 24, 25 and 27—Scope—Right of support to building—Nature of—If natural right—First floor and ground floor of same building belonging to different owner—Right of owner of first floor to support from ground floor—Right to enter upon ground floor—Liability of owner of ground floor—Extent of.

A house was originally partitioned between two

and for his cattle from whom he was accustomed to his shop and relations between the parties were not such as to indicate that the user was attributable to leave or license, it must be presumed that his user was as of right (*Niyogi, J.*) **RAJLU NAIDU v. MALAK.**

I.L.R. 1939 Nag. 580=1939 N.L.J. 297= A.I.R. 1939 Nag. 197.

—S 18—Applicability—Right to make offerings at a particular place—Owners of cattle of a village accustomed.

owners of cattle living in a
accustomed for a long
ings when their cattle are
e offerings are made at a
It does constitute a right
to make those off
ANBAI SINGH v.

EASEMENTS ACT (1882), S 18

SAHAJ

1939 A W R (H C) 327=

1939 A L J 391=A I R 1939 All 387

—S 18—Customary easement—Requisites

To establish a customary easement the custom must be reasonable certain, and the user must not have been permissive or exercised by stealth or force and the right should have been enjoyed for such a length of time as to suggest that by agreement or otherwise the user had become the customary law of the locality (*Stone C J and Bose, J*) *GANPATRAO v SHEIKH BADAR*

1939 N L J 246=183 I C 341=12 R N 56=

A I R 1939 Nag 193

ELECTION—Approbate and reprobate—Applicability—Question as to legality of document—Conduct of parties—Relevancy See C P CODE S 47

—Award on arbitration—Order
tiff executing order as decree in part—
contending that there is no executory
against statute See C P CODE S

—AWARD ON ARBITRATION 41 Bom L R 170

—Election offence—Person having no vote in ward
in which elect on takes place—Right to make complaint
See BENGAL MUNICIPAL ACT, S 34

43 C W N 1063

—Nomination paper—Signature—Meaning—
Candidate affixing rubber stamp impression of his name
address etc with his own hand—Impression not facsimile
of signature—No impression against signature
column—If properly signed

Where a document such as nomination paper in res
pect of an election is required to be signed a signature
by means of a rubber stamp is sufficient. It is not
necessary that the stamp should be facsimile of the
signature if the document is written in his hand. Nor

requirements and the nomination paper is a proper
and valid one though nothing is inserted against the
space marked signature and though the stamp is not the
facsimile of the candidate's signature. If the nomination
paper is not properly signed in any sense and does
not comply with the requirements it
to be signed after the expiration of
its being sent in. A signature
the date fixed cannot make it valid
(*Engineer J*) *RATANSEV DAMJ*
VERJI

184 I C 620=41 Bom L R 524=41 Bom L R 524=

41 Bom L R 524=A I R 1939 Bom 335

—What constitutes See SUCCESSION ACT

Ss 180 AND 181 1939 M W N 280

ELECTRICITY ACT (IX OF 1910)—Right of
Electric Supply Co to demand fee for test—U P
Electric Supply Co conditions of supply—Paras 9
(2) and 11—Construction

Where a consumer intended
smaller horse power in the
horse power and wrote to
Co about it and asked them
examination it was held that the company was not
entitled under either Para 9 (2) or Para 11 of the condi
tions of supply to demand a testing fee for that purpose
(*Mulla J*) *LADLI PRASAD ZUTSHI v U P ELEC*

ELECTRICITY ACT (1910) S 44

TRIG SUPPLY COMPANY LTD

1939 A W R (H C) 417=A I R 1939 All 498

—S 2 (n)—Works—Supply line—If 'works'
See ELECTRICITY ACT S 44 (b) AND R 31 (1)

41 Bom L R 878

—S 5 (f)—Scope of—Act how far affects C P

Code See C P CODE Ss 60 4, AND ELECTRI

CITY ACT, S 5 (f) 1939 A L J 983

—S 19—Duty of the licensee—Infringement of

rights of others—When justified—Licensee if can be

restrained by injunction from infringing

S 19 of the Electricity Act primarily prohibits the

licensee from doing anything which may amount to a

nuisance in the exercise of the powers given by the Act

and by the license Any infringement of any

sary? *PRABHU* authorised by statute the only last

on the licensee by S 19 is enforceable at law. There

is nothing in the Electricity Act to relieve the licensee

from the liability to an act on for injunction restraining

him from infringing the rights of others (*Iqbal Ahmad*and *Bajaz JJ*) *FAIZAZ HUSSAIN v MUNICIPAL*

BOARD AMROHA I L R 1939 All 237=

181 I C 964=11 R A 636=1939 A L J 19=

1938 A W R (H C) 131=A I R 1939 All 280

—S 21 (2)—Rule made by *Khattar Electric**Engineering and General Supply Co* providing for

minimum charge—If ultra vires

The rule made by *Khattar Electric Eng neering and**General Supply Co* Ltd *Dera Ismail Khan* providing

that every consumer shall pay a minimum charge of

Rs 25 per annum had not been made with the approval

of the Government. The fact that in 1936 the company

addressed a letter to the Chief Engineer on the

and had received the reply that in the case of

consumer the recovery of the minimum charge

ful from the date of the contract entered into by

consumer with the company is no approval of the

therefore the rule is ultra vires (*Mir Ahmed**KA RAM v KATTAR ELECTRICAL ENGINEER**GENERAL SUPPLY CO* 11 R Pesh 66=

181 I C 345=A I R 1939 Pesh 8

—S 26 (5) and R 31 (1)—Relative scope—If

conflict with each other

S 26 (5) of the Electricity Act deals with a case of

the supply line

the other hand

contemplates

cables placed on a

is therefore no

(Wadia and

Lokur JJ) *EMPEROR v BHAGWATI*

I L R 1939 Bom 496=41 Bom L R 878=

A I R 1939 Bom 480.

—S 44 (b)—Construction—Works laid or connect

ed—If to be also works belonging to licensee

S 44 (b) of the Electricity Act does not require that

the works laid or connected up with any other works

ELECTRICITY RULES (1937) R 31.**ESTOPPEL**

"Works" as defined by S 2 (n) of the Electricity

1939 M W N. 124 = 49 L.W. 381 =
1939 N.L.J. 136.

tion of the meter up to its new position, his act amounts to an offence under S. 44 (b) of the Electricity Act as well as an offence under R 31 (1) read with R. 122 (a) of the Electricity Rules. (*Wadia and Lekur, JJ*)
EMPEKOR v BHAGVATI. I L R 1939 Bom 486 = 41 Bom LR 878 = A I R 1939 Bom 480

ELECTRICITY RULES (1937), R 31 (1) —

Applicability

Offence—1

ACT, S. 44

— R. 3

the Act 3

(1).

— R 123—Who is liable to punishment under—

Workman or supervisor

Under R 123 of the Indian Electricity Rules, it is

EMIGRATION ACT (VII OF 1922)

(2) (b)—Workmen trying to leave British India for work elsewhere without Local Government's permission—Assistance by proprietor of a firm in their attempt—Offence against the Act—Person who helped them to leave the place guilty of offence—Conviction whether proper

Where the proprietor of a Cigar Manufacturing

— Acquiescence as instance of estoppel, See ACQUIESCENCE. 1939 N.L.J. 136.

— Bills of lading issued by shipping company without receiving goods on board—Shipper raising money from Bank on security of bills of lading and absconding—Goods seized at instance of unpaid vendors as obtained by cheating—Claim by Bank

Subsequent suit on basis that there is no executable decree—If barred, See C P. CODE, S 47.

41 Bom LR 170.
nt of rights—Proof of full under-

ishing his right may be prevented

an

nts

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A.I.R. 1939 A. 348.

— Standing by—Company—Application for allotment of shares—Company transferring shares of another to applicant and entering his name in register of members as transferee—Applicant fully aware of transfer and entry—Subsequent objection after long time to entry of name as transferee and to be contributories—Sustainability—

e name is included in the register

a company becomes aware that

circumstances are such that if proceedings are brought

ESTOPPEL

reason of his consent that shares should be transferred instead of being allotted to him he was liable to be included in the list of contributories in respect of the shares transferred in his name and that he was not entitled to an order for rectification of the register of members (*Gentle, J*) GARLAND PETROLEUM CO (MADRAS), LTD *In the matter of*. 49 L W 431= 1939 M W N 666=A I R 1939 Mad 803= (1939) 2 M L J 122

—Statement by subsequent mortgagee that he would not enforce his mortgage—If could estop him

FUND LTD v RAMCHAND HEMRAJ
I L R 1939 Nag 357=1939 N
A I R 1939

EVIDENCE

Admissibility
Admissions
Admission of
Age
Birth register
Burden of proof
Confession
Criminal trial
Document
Expert evidence
Map
Panchayat namas
Presumption
Proof
Relationship
Riwa'z

1939 A L J 478=A I R 1939 All 522

—Admissions—Admissibility—Rule as to

In certain cases a witness may be asked to give particulars of what a person has said shortly after an occurrence and a complaint that such a person may have made

evidence which is that statements may be used against a witness as admissions but one is not entitled to give evidence of statements on other occasions by the witness in confirmation of his testimony. Hence, where a dispute between A and B is whether A had agreed to make a purchase from B on a certain date, a statement in support of B's allegation in letter written by B to a third party is inadmissible either in examination in chief or in cross examination (*Lord Porter*) RICHARD GILLIE v POSHO LTD 182 I O 27=11 R P C 281= 50 L W 81=41 P L AIR 1939 P C 1

—Admission of—Court refusing to admit in the first instance—Jurisdiction to take consideration subsequently

EVIDENCE.

A Court which refuses to accept a piece of evidence in the first instance has no jurisdiction to take the same into consideration at a later stage unless some explanation or reason can be given by the party producing the same. Once a document is admitted as having been produced at a late stage by a dodge or trick, there is an end of the matter (*Wort, J*) RAM KESHAN CHAMAR v RAMSOHAG CHAMAR 5 B R 736= 12 B P 12=182 I O 407=A I R 1939 Pat 530

—Age—Statements as to in depositions—Villagers—Value to be attached

When the age is not in question in stating their age cannot be of such particular issue long time of age was not

—Birth register—Entry in—Relation of entry to particular person—Proof of

Where in proof of the age of a person whose age is in question an extract from the birth register is produced to the effect that a child was born to the father on a certain

—Burden of proof—Omission of party to produce best evidence—Effect

Parties to a suit should bring before the Court their best evidence, when this is not done the Court would be justified in concluding that it would if brought into Court, not support the case of the party omitting to produce it and in these circumstances such party cannot be allowed

doctrine of ones of MOHAMMAD HUS 41 P L R 895= I R 1939 Lah 330 character of—Magis is in free atmosphere by question put by

—Confession of an accused

accused that he is in the free atmosphere of a Court. Failure to do so detracts from the voluntary character of the confession. Where the police already know most of the facts recorded in the confession before it is recorded, that circumstance takes away the force of the confessional state

confessing accused that at any rate cannot be considered to be voluntary (*Abdul Ghani and Singaratelu Mudaliar JJ*) SETTY, *In re* 17 Mys L J 238

—Criminal trial—Special rules of evidence See CR P CODE SS 509 to 512

—Document—Police report as to loss of—If can be relied upon

It would not be safe to rely on reports about loss of documents on the basis of a police report and take it for granted. It would result in police reports filling in the

—Admissibility and weight of

EVIDENCE.

Telephony is a science or art and the witnesses' knowledge of the telephone and of engineering generally places them in a special position and makes them competent to express an opinion upon articles and matters which are largely in use in the department of the telephone and of engineering generally. The evidence of these witnesses is relevant and admissible as opinion of experts and the expert evidence of those witnesses is entitled to very considerable weight if they hold diploma in telephony and engineering and also have great experience. (*Lobo, J.*) **BACHRAJ FACTORIES, LTD v BOMBAY TELEPHONE CO., LTD** 184 I.C. 36=

12 R.S. 83=A.I.R. 1939 Sind 245

Map—Information contained in—Value of.

Accuracy as to the information contained in a map

EVIDENCE ACT (1872), S. 10.

be correct as between them on the one hand and their father and eldest brother on the other hand, it is useful evidence as to their relationship *inter se* (*Sir George Rankin*) **CHUNI LAL v. UDAI PRAKASH**

183 I.C. 177=1939 O.L.R. 505=43 C.W.N. 1093=

A.I.R. 1939 P.C. 200 (P.C.).

—*Rattigan's Digest*—Admissibility—Evidentiary value of—*Rattigan's Digest*—Value of *See* CUSTOM (PUNJAB)—PROOF. I.L.R. (1939) Kar 475.

—*Witness*—Calling of witness to explain meaning of document—Permissibility

Generally speaking, it is not permissible to call a witness to explain to the Court what a document means unless such witness is an expert under the Evidence Act. It is for the Court to ascertain what the document means

received, there is no legal presumption that it was meant to be repaid. The payment may be for various reasons and it is for the pe Court and sue for recovery of that was meant to be repaid. (*Bhude, J.*) **CHANDU LAL,**

A.I.R. 1939 Lah. 386

Presumption—Revenue sale—Purchaser not

S. 10—Applicability—Fast common intention—

intention of the
intention in the
the past, (*Davst,*

I.L.R. 1939 Kar. 449=184 I.C. 145=12 R.S. 90=

40 Cr.L.J. 882=A.I.R. 1939 Sind 185.

Proof—Duty of plaintiff—If can succeed merely on the defects of the defence.

A plaintiff cannot succeed merely by the defects of the defendant's case. He has to prove his own case. (*Marsh, S.M. and M.*) **ACHHAIAR v SHEO PRASAD**

1939 A.L.J. (S)

1939 A.W.R. (B.R.) 71=1939

Relationship—Suit by two brothers on footing that they and other members form joint family.

ments made to the police. S. 10, Evidence Act, does not avoid in appropriate cases the operation of either S. 25,

make no
ments are
r. EM-
O. 145=
Sind 125.

ence to be set in.
S. 10 of the Evidence Act is quite comprehensive. Its
ders admi-
ich is an
edian

EVIDENCE ACT (1872), S 11

is to give satisfactory evidence to show a common purpose. The existence of the assent of minds which is involved in a conspiracy may be and from the secrecy of the crime usually must be inferred from the proof of facts and circumstances which taken together apparently indicate that they are merely part of some complete whole (*Rachpal Singh*).

PEROR 18

1939 A Cr C 98-1

1939 A W R (H C)

—S 11—Scope—If subject to S 32

S 11 of the Evidence Act must be read subject to the other provisions of the Act and a statement not satisfying the conditions laid down in S 32 cannot be admitted merely on the ground that if admitted it may probabilise or improbabilise a fact in issue or a relevant fact (*Varadachariar and Abdur Rahman JJ*).

SEVUGAN CHETTIAR v ZAMINDAR OF SIVAGANGA
1939 M W N 841

—Ss 11 14 and 15—Scope—Similar acts—Admissibility in evidence

Except as evidence of intent transactions is inadmissible under S 11 of the Evidence Act relates to the nature and character of the acts inadmissible under S 11 of the

Ghani and Singaravelu Mudaliar JJ SETTY *Inter*
17 Mys LJ 238

— " —

governed by a particular school of Hindu law is admissible in evidence under S 11 of the Evidence Act only if he is a member of a connected family (*se*) a family which had descended from the same stock from which those parties descended and not when he is neither an agnate nor a relative of theirs (*Mitter J*) SUKDEB CHARAN JANA v MKITUNJOY PAL 43 OWN 395

—S 13—Instances post litem—Admissibility

Under S 13 of the Evidence Act instances in which the right of custom is claimed recognised or exercised,

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l
c

—Ss 13 and 43—Judgment not inter partes—Finding in and reasons for decision—Relevancy of

Although a judgment in a previous case not inter partes may be admissible under the provisions and 43 of the Evidence Act as establishing a transaction, that is the decision arrived at thereupon which the judgment was founded are not a part of the transaction and cannot be found of fact there come to itself be relevant evidence.

SANVEERANGOUDEA v BASA

12 R B 161—41 Bom LR 561=

AIR 1939 Bom 313

—S 13—Judicial decisions—Value—Considerations

S 13 of the Evidence Act makes admissible particular instances in which the custom is claimed recognized or exercised. Ordinarily and in the absence of special circumstances a judicial decision in recognition or denial of a custom is good evidence in proof thereof.

EVIDENCE ACT (1872) S 17

decree as a piece of evidence is great (*Niamatullah and Bajpai, JJ*) MAHADEO v BALESHWAR PRASAD
1939 A L J 708=1939 A W R (H C) 671=
1939 R D 493=A I R 1939 All 626

—S 13—Post litem judgments—Admissibility
Judgments subsequent to the suit in which they are given in evidence

670=

A I R 1939 Lah 152

—S 13—Proof of custom—Judgment not produced—Judge's recital about it—Admissibility

In order to prove the existence or non existence of a particular custom it is only judgment that can be produced as an instance. But if such judgment is not produced as an instance it is not admissible.

—S 13—Transaction—Document relating to it as being

adjacent to
admissible
action in so

far as it evidences an assertion or recognition or denial of the right contained therein the description in such is situate in a particular made admissible under S 11 with the property is not on the existence of that property within the village (*Varadachariar and Abdur Rahman JJ*) SEVUGAN CHETTIAR v ZAMINDAR OF SIVAGANGA 1939 M W N 841

—S 13 (b)—Asserted—Meaning of—Verbal statement not amounting to and not accompanied by any act—Admissibility

The word 'asserted' in S 13 (b) of the Evidence Act includes both a statement and enforcement by act. The evidence tendered under this section need not necessarily be evidence of acts done but a verbal statement not act would (Venkata RAJAH OF

1939 M W N 325=49 L W 409=

A I R 1939 Mad 432=(1939) 1 M L J 602

—S 15—Scope—Hearsay evidence or evidence of fact not properly to point out

admit hear
from

its cogency or weight and it is the duty of the judge in a sessions trial to point out to the jury the facts in favour of the accused as well as the facts against him (*Davis J C and Lobo J*) SHEWARAM v EMPEROR 184 I C 474=12 R S 107=A I R 1939 Sind 209

—S 17—Admissions—Value—Considerations

The value of admissions must depend upon the circumstances in which they were made and possible motives for incorrect statements by interested parties. The nature of the facts admitted must be considered. If the fact is the personal knowledge of the person here is no evidence of convincing value its value is considerable. If,

EVIDENCE ACT (1872), S. 20.

on the other hand, the fact admitted is an inference from evidence and circumstances, the weight of admission may be very little. A general allegation by an interested party as to the existence or non-existence of a

—S. 20—Applicability—Agreement to abide by statement of specified person. *See* C. P. CODE, SCH II, PARA. 15. 1939 A.W.R. (H.C.) 7.

—S. 21—Admission—Effect on burden of proof. When there is an admission by a party, the burden of proof shifts and it is for the party making the admission to explain it away. (*Zia-ul-Hasan and Hamilton, J.J.*) **DUKHARAN NATH v. COMMERCIAL CREDIT CORPORATION LTD** 1939 O.W.N. 1114 = 12 R.O. 125 = 184 I.C. 521 = 1939 O.L.R. 630

no rule about the relevancy of evidence in the Evidence Act is affected by any provisions of the said code. The admission of guilt in an application presented to a Magistrate is admissible under S. 21 of the Evidence Act. It does not become irrelevant under S. 24 or S. 25 of the

—S. 24—Admission of confessions—Duty of Court.

Before admitting confessions it is duty of the Judge to satisfy himself that there has not been any inducement of the nature described in S. 24 of the Evidence Act. If the circumstances are such as to raise a strong suspicion in his mind that the confession has been induced by threats or promises of the nature described in that section, then the confession is irrelevant. It is not necessary for the defence to establish conclusively that there was such inducement or threat. It is sufficient if the circumstances afford reasonable grounds for believing that there was such an inducement or threat. (*Henderson and Sen, J.J.*) **MOHSENA KHATUN v. EMPEROR** 184 I.C. 222 = 40 Cr.L.J. 880 = 12 R.C. 214 = 43 C.W.N. 893 = A.I.R. 1939 Cal. 610

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fession is false, the Court must accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting the exculpatory element as inherently incredible. (*Young, C.J. and Sale, J.*) **KALA MOHAMMAD AKBAR v. EMPEROR** A.I.R. 1939 Lah. 534

—S. 24—Person in authority—President of Village Vigilance Committee—Confessional statements made to—Relevancy.

The president of a Village Vigilance Committee is a person in authority within the meaning of S. 24 of the Evidence Act and confessional statements made by an accused to such a person are irrelevant. (*Burn and*

EVIDENCE ACT (1872), S. 27.

Lakshmi

—Scope—Statement by accused using by police leading to discovery.

s charged with murder, made a to the Superintendent of Police, which led to the discovery of a bill hook which the accused said was the weapon used by him to kill the deceased. It was admitted that for four hours on the night before and for two hours on the morning on which he made the statement, the Superintendent of Police was questioning him.

Held, that this was a flagrant violation of the Madras Police Executive Orders, and that the statement of the accused was not a voluntary statement and could not be admitted as it was ruled out by S. 24 of the Evidence Act, although the evidence regarding the production of the bill hook alone could be admitted in evidence. (*Burn and Stodart, J.J.*) **PAPIAH v. EMPEROR** 1939 M.W.N. 1134 = 50 L.W. 742.

—Ss 25, 26 and 27—'Confession'—Meaning. No statement that contains self-exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. A confession cannot be construed as a statement by an accused "suggesting the inference that he committed the offence" (*Lord Atkin*). **NARAYANASWAMY v. EMPEROR** 1939 A.I.R. 396 = 43 C.W.N. 473 = 1939 A.W.R. (P.C.) 35 = 49 L.W. 349 = 180 I.C. 1 = 1939 O.W.N. 232 = 1939 A.C. 49 = 66 I.A. 66 = 18 Pat. 234 = 1939 O.L.R. 134 = 1939 P.W.N. 205 = 20 P.L.T. 285 = 1939 A.L.J. 298 = 69 C.L.J. 273 = I.L.R. (1939) Kar. 123 (P.C.) = 41 P.L.R. 272 = 5 B.R. 449 = 40 Cr.L.J. 361 = 41 Bom.L.R. 428 = 11 R.P.C. 166 = 1939 M.W.N. 185 = A.I.R. 1939 P.C. 47 = (1939) 1 M.L.J. 756 (P.C.)

—S. 26—Extra judicial confession—Reliance upon. *See* EVIDENCE ACT, SS. 27 AND 26. 1939 A.L.J. 732.

—S. 27—Confessional statement leading to discovery—Preamble having no connection with discovery—

—S. 27—Scope—Statement by accused falling under S. 162, Cr. P. C. de, leading to discovery of facts—Admissibility.

Statements made by an accused to a Police Officer in the circumstances provided for in S. 27 of the Evidence Act is the general rule, and the latter rule does not derogate from the former. Therefore statements made by accused persons to the police after their arrest, and admissible under S. 27 of the Evidence Act are admissible in evidence against them and are not excluded by S. 162, Cr. P. Code. (*Burn and Stodart, J.J.*) **MORRANNA v. EMPEROR** 50 L.W. 423 = 1939 M.W.N. 877 = A.I.R. 1939 Mad. 810 = (1939) 2 M.L.J. 635.

—S. 27—Scope—Statement by accused falling under S. 162, Cr. P. C. de, leading to discovery of facts—Admissibility.

EVIDENCE ACT (1872), S 11

is to give satisfactory evidence to show a common purpose. The existence of the assent of minds which is involved in a conspiracy may be and from the secrecy of the crime, usually must be inferred from the proof of facts and circumstances which, taken together apparently indicate that they are merely part of some complete whole (*Kachhap Singh J*) BHOLA NATH v EMPEROR 181 IC 191=1939 A LJ 785=

1939 A Cr C 98=12 R A 189=40 Cr L J 856=

1939 A W R (H C) 464=A I R 1939 All 567

—S 11—Scope—If subject to S 32

S 11 of the Evidence Act must be read subject to the other provisions of the Act, and a statement not satisfying the conditions laid down in S 32 cannot be admitted merely on the ground that, if admitted, it may probalilise or improbabilise a fact in issue or a relevant fact (*Paradachariar and Abdur Rahman JJ*) SEVUGAN CHETTIAR v ZAMINDAR OF SIVAGANGA 1939 M W N 841

—Ss 11 14 and 15—Scope—Similar acts—Admissibility in evidence

Except as evidence of intention evidence of similar transactions is inadmissible in 11 and 15 of the Evidence Act relates to the nature and character inadmissible under S 11 of the *Ghani and Singaravelu Mudu*

—S 11—Statement by person that certain law governs parties—Such person neither agnate nor relative—Admissibility

A statement by a person that certain parties are governed by a particular school of Hindu law is admissible in evidence under S 11 of the Evidence Act only if he is a member of a connected family (*ie*) a family which had descended from the same stock from which those parties descended and not when he is neither an agnate nor a relative of theirs (*Mitter J*) SURDEB CHARAN JANA v MKRITUNJOY PAL 43 C W N 395

—S 13—Instances post litem—Admissibility

EVIDENCE ACT (1872) S 17

decree as a piece of evidence is great (*Niamatullah and Bapat, JJ*) MAHADEO v BALESHWAR PRASAD

1939 A L J 703=1939 A W R (H C) 671=

1939 R D 493=A I R 1939 All 626

—S 13—Post litem judgments—Admissibility

Judgments subsequent to the suit in which they are relied on as evidencing the particular transaction or instances in dispute are not admissible in evidence (*Skemp, J*) DASONDHI v MILKHI RAM

181 IC 703=12 R L 878=41 P L R 670=

A I R 1939 Lah 152

—S 13—Proof of custom—Judgment not produced—Judge's recital about it—Admissibility

In order to prove the existence or non existence of a particular custom it is only judgment that can be produced as an instance. But if such judgment is not produced a Judge's recitals about such judgment cannot be relied on (*Skemp J*) DASONDHI v MILKHI RAM

181 IC 703=12 R L 878=41 P L R 670=

A I R 1939 Lah 152

—S 13—Transaction—Document relating to property adjacent to suit land—Description as being

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document that the property is situate in a particular village is not part of what is made admissible under S 13 when the right to deal with the property is not necessarily dependant upon the existence of that property within the village (*Paradachariar and Abdur Rahman JJ*) SEVUGAN CHETTIAR v ZAMINDAR OF SIVAGANGA 1939 M W N 841

—S 13 (b)—Asserted—Meaning of—Verbal statement not amounting to and not accompanied by any act—Admissibility

The word 'asserted' in S 13 (b) of the Evidence Act includes both a statement and enforcement by act. The

S 13

S 13 of the Evidence Act makes admissible particular instances in which the custom is claimed recognized or exercised. Ordinarily and in the absence of special circumstances, a judicial decision in recognition or denial of a custom is good evidence in proof thereof

(*Davis, J C and Lobo J*) SHEWAKAM v EMPEROR 184 IC 474=12 R S 107=A I R 1939 Sind 209

—S 17—Admissions—Value—Considerations

The value of admissions must depend upon the circumstances in which they were made, and possible motives for incorrect statements by interested parties

The nature of the facts admitted must be considered. If the fact is the personal knowledge of the person here is no evidence of convincing value, its value is considerable. If,

EVIDENCE ACT (1872), S. 20.

on the other hand, the fact admitted is an inference from evidence and circumstances, the weight of admission may be very little. A general allegation by an interested party as to the existence or non-existence of a

A.I.R. 1930 All 626.

—S 20—Applicability—Agreement to abide by statement of specified person. *See* C. P. CODE, SCH II, PARA. 15. 1939 A.W.R. (H.C.) 7.

—S 21—Admission—Effect on burden of proof. When there is an admission by a party, the burden of proof shifts and it is for the party making the admission to explain it away (*Zia-ul-Hasan and Hamilton, J.J.*) *DUKHHARAN NATH v. COMMERCIAL CREDIT CORPORATION LTD.* 1939 O.W.N. 1114 = 12 R.O. 125 = 181 L.O. 521 = 1939 O.L.B. 630

—Ss 21, 24, 25—Relevancy of evidence—If affected by Cr.P. Code—Admission of guilt in application to Magistrate—Admissibility—Relevancy.

Unless it is so specifically stated in the Cr. P. Code, no rule about the relevancy of evidence in the Evidence Act is affected by any provisions of the said code. The admission of guilt in an application presented to a Magistrate is admissible under S. 21 of the Evidence Act. It does not become irrelevant under S. 24 or S. 25 of the

—S 24—Admission of confessions—Duty of Court.

Before admitting confessions it is duty of the Judge to satisfy himself that there has not been any inducement of the nature described in S. 24 of the Evidence Act. If the circumstances are such as to raise a strong suspicion in his mind that the confession has been induced by threats or promises of the nature described in that section, then the confession is irrelevant. It is not necessary for the defence to establish conclusively that there was such inducement or threat. It is sufficient if the circumstances afford reasonable grounds for believing that there was such an inducement or threat (*Henderson and Sen, J.J.*) *MOHSENA KHATUN v. EMPEROR* 181 I.C. 222 = 40 Cr.L.J. 880 =

EVIDENCE ACT (1872), S. 27.

Lakshmana Rao, J.J.) *SATHALAVADAN v. EMPEROR* 183 I.C. 561 = 40 Cr.L.J. 809 = 12 R.M. 314 = 1939 M.W.N. 341 = 49 L.W. 522 = A.I.R. 1939 Mad 515.

—Ss 24 and 27—Scope—Statement by accused after persistent questioning by police leading to discovery of fact—Admissibility.

The accused, who was charged with murder, made a statement on a morning to the Superintendent of Police, which led to the discovery of a bill hook which the accused said was the weapon used by him to kill the deceased. It was admitted that for four hours on the night before and for two hours on the morning on which he made the statement, the Superintendent of Police was questioning him.

Held, that this was a flagrant violation of the Madras Police Executive Orders, and that the statement of the accused was not a voluntary statement and could not be admitted as it was ruled out by S. 24 of the Evidence Act, although the evidence regarding the production of the bill hook alone could be admitted in evidence. (*Burn and Stodart, J.J.*) *PAPIAH v. EMPEROR* 1939 M.W.N. 1131 = 50 L.W. 742

—Ss 25, 26 and 27—'Confession'—Meaning of.

No statement that contains self exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. A confession cannot be construed as a statement by an accused "suggesting the inference that he committed" the offence. (*Lord Atkin.*) *NARAYANASWAMY v. EMPEROR*.

1939 All E.R. 396 = 43 C.W.N. 473 = 1939 A.W.R. (P.C.) 35 = 49 L.W. 349 =

180 I.C. 1 = 1939 O.W.N. 282 = 1939 A.C.R. 49 =

66 I.A. 66 = 18 Pat. 234 = 1939 O.L.R. 131 =

1939 P.W.N. 205 = 20 P.L.T. 265 =

1939 A.L.J. 298 = 69 C.L.J. 273 =

L.L.R. (1939) Kar. 123 (P.C.) = 41 P.L.R. 272 =

5 B.R. 449 = 40 Cr.L.J. 364 = 41 Bom.L.R. 428 =

11 R.P.C. 166 = 1939 M.W.N. 185 =

A.I.R. 1939 P.C. 47 = (1939) 1 M.L.J. 756 (P.C.)

—S. 26—Extra-judicial confession—Reliance upon. *See* EVIDENCE ACT, SS. 27 AND 26. 1939 A.L.J. 732.

—S 27—Confessional statement leading to discovery—Preimble having no connection with discovery—

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The president of a Village Panchayat Committee is a person in authority for the purposes of the Evidence Act accused to such

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EVIDENCE ACT (1872), S 27.

Act, have been treated, as a matter of unquestioned authority, as being admissible in evidence made to an

given effect to, S 162 Cr P Code having

20 F L T 420 = A I R 1939 Pat 577

—S 27—Scope—Statement of accused to police admissible under—If statement is made in presence of a Magistrate or a Police Officer.

S 162, Cr P Code, statements made to a Magistrate or a Police Officer are admissible under S 27 if they contain information in consequence of which an offence has been discovered. But statements which are admissions of facts which are admissible under S 27, Evidence Act, are not admissible under S 1(2) if they are derogated from by the Cr P Code (Burn

THEVAR, *In re* I L R (1939, Mad 947 = 184 I C 593 = 12 R M 469 = 1939 M W N 1000 = 50 T W 918 = A T R 1939 Mad 258 =

ignored (D R Norman) EMPEROR v BHAGHU NATH 1939 A M L J 56

—S 27—Statement leading to discovery—Proof of actual words of accused—Necessity to prove

It is true that the statement of an accused person falling under S 27 of the Evidence Act is admissible, be proved by the accused. It is not enough that the accused gave information to the police.

used gave that the (Reilly, ERAPPA 17 Mys L J 158

—Ss 27 and 28—Statement to police leading to discovery—Admissibility—Extra judicial confession—If can be relied upon

Where as a result of certain statements made to a Sub Inspector of Police by the accused while in police custody, a spear head and a latbi were recovered from the respective places where they were said to have been secreted by accused, such statements to the police officer are admissible in evidence under S 27 of the Evidence Act in a trial of the accused for an offence under S 302 I P Code. The value of extra judicial confession and where there is no other

EVIDENCE ACT (1872), S 30

—S 27—Statement under—If to be voluntary—Induced statement—Admissibility and use of
There is no reason why the general rule that a confession

—S 30—Admissibility of confession by co accused—Principle underlying—Confession if should be of the same offence

The principle on which the confession of one accused is used against another is that self implication is supposed to be a confession of the same offence as the offence of the other accused.

—S 30—Confession by accused before inquiring Magistrate and implicating co accused—Admissibility

(1939) 2 M L J 202
—S 30—Confession of co accused—Evidentiary value

A confession of a co accused cannot be the main evidence in a case but it is the weakest possible kind of evidence.

Dunkley J J) AH PHUT v THE KING
A I R 1939 Rang 402
—S 30—Confession of co accused—Evidentiary value

The evidential value of a confession made by a co accused is not very high. But the confession receives confirmation when it leads to the arrest and identification of the other accused (Stemp and Beckett, J J) ISHAR SINGH v EMPEROR I L R (1939) Lah 67 = 41 F L R 424

—S 30—Confession—Use against co accused—Extent

A confession by an accused may be taken into consideration as against a co accused under S 30 of the Evidence Act. It does not stand on the same level as a confession made by the accused himself. It is used to supplement the confession of the accused (and Follock J J) 184 I C 274 = 1939 N L J 442 = A I R 1939 Nag 295.

racted confession of co accused—Admission—Limits to—Duty of Judge to jury

EVIDENCE ACT (1872), S. 30

It is not the law that the confession of one accused can never be used against his fellow-accused if it has been retracted by the accused who made it. If the Court is convinced that the confession was made voluntarily at

of any kind against the other accused. If there is evi-

—S 30—Statement of accused taken under S. 164, Cr. P. Code—Admissibility against co accused

of his own guilt implicating at the same time the person against whom it is sought to be used. The reason is that an admission of one's own guilt operates as a sort of sanction, which to some extent, takes the place of oath, and so affords some guarantee that the whole statement is true. (*Naval Kishore, C J and Ranjithal, J.*)
SARKAR v. POONANSING 1939 M L R 19 (Cr.).

—S 31 and Agra Tenancy Act (1926), S 44—Admissions—Value of—Admission of tenants' status—If bars suit under S 44 of Agra Tenancy Act

Admissions under S. 31 of the Evidence Act are no doubt, not conclusive proof of the matters admitted, but they may operate as estoppels. Where in proceeding under S 106 of the Agra Tenancy Act the landholder has admitted the status of the tenant in the suit under S. 44 against the same tenant.
M.) SHARD MAHESH PRASAD SIN RAM. 1939 E D 209 = 1939

—S 31—Interpretation of
What S 31 of the Evidence Act means is that an admission, unless it amounts to an estoppel is not conclusive as against the maker, as it is open to him to prove that it was made under a mistake of law or fact or that it was made under threat or inducement. (*Ba U, J*)
THE KING v. SAW MIN 1939 Rang. L R 97 =
182 IC 705 = 40 Cr L J 691 = 12 R R 25 =

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Where the age of a witness is given in the paper con-

EVIDENCE ACT (1872), S. 32.

—S. 32 (1)—"Circumstances of the transaction."—Meaning of—Admissibility of statement—Condition of.

A statement falling under S 32 (1) of the Evidence Act may be made before the person of death has been

to his reasons for so proceeding or that he had been rson to meet him, or that he would each of them be circum- and would be so whether the was not the person accused, it indeed be exculpatory. The "circumstances of the me proximate relation to the as for instance, in a case hey may be related to dates nce from the date of the actual fatal dose. The "circumstances" are of the transaction which resulted in the death of the declar-

43 O W N 413 = 1939 A W R 11 (C) 300 =
49 L W 349 = 180 IC 1 = 1939 O W N 282 =
1939 A Cr C. 49 = 1939 M W N. 185 =
66 IA 66 = 18 Pat 234 = 1939 O L R 134 =
1939 P W N 205 = 20 Pat. L T. 265 =
1939 A L J 298 = 69 O L J 273 =
I L R (1939) Kar 123 = 41 P. L R 272 =
5 B R 449 = 40 Cr L J 364 = 41 Bom L R 428 =
11 R P C. 166 = A I R 1939 P C. 47 =
(1939) 1 M L J 756 (P C)

—S 32 (3)—Statements against interest in cancelled will—Admissibility

Where in a cancelled will the testator has made a statement in the interests of other persons, his sons, his interest does

—S 32 (3)—Statement against interest—Meaning of—Test

The sanction attaching to a statement by a person who is dead on the ground that it was against his interest to make it must depend upon the measure of that interest, and when it appears that the statement was probably to the immediate interest of the person who made it, the statement is admissible. (*Davis, J C.*)
KADAS
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A I R. 1939 Sind 145.

—S 32 (3)—Statement against interest—Member by him

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EVIDENCE ACT (1872), S. 32

—S 32(3)—Statement, if against interest—How determined

Under S 32(3) of the Evidence Act, in order to determine whether a certain statement is pecuniary or proprietary interest of the person, we must look to the statement itself and the nature of the transaction in the course of

12 R P 235=2 A I R 1939 Mad 446

—S 32(5)—Scope—Statement as

the latter made an averment in the written statement to the effect that K was understood to have taken a boy N son of L who is a gnat and a cousin brother of K in adoption S died pending the suit and the present plaintiff was brought on the record as the legal representative as a legatee under the will of S He adopted the written

was a next reversioner or whether there were nearer reversioners than the plaintiff

Held, that the statement made by the plaintiff in the prior suit adopting the statement of S as a legatee under the will of S and he missible in the present suit brought by reversioner, but that the statement of S was admissible under S 32(5) of the Evidence Act as S was a person having special means of knowledge and it was made ante litem motam so far as L being a gnat of K was concerned (Venkataramana Rao, J) CHENDIKAMBA v VISWANATHAMAYYA

1939 M W N 275 43 L W 273 = A I R 1939 Mad 446=(1939) 1 M L J 227

Weston, J) HOLLARAM v DWARKADAS

I L R (1939) Kar 573=183 I O 67=12 R S 41=A I R 1939 Sind 145

—S 32(6)—Pedigree—Uniformity in several pedigrees—Presumption

Where there are a number of pedigrees put in by the direct ancestors of parties to the case and they are always the same, a fact which can There is a design in the way they design can only have been to get (Hamilton J) JADUNATH SINGH

178 I O 850=11 R O 127=1939 O A 2=A I R 1939 Oudh 17

—S 33—Admission of deposition under—Bare statement—If sufficient

Where the deposition of a witness is recorded by a

EVIDENCE ACT (1872), S. 35

committing Court and is presumably admitted under S 33 but there is nothing on record to show that such evidence comes within the terms of S 33, the bare

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49 L W 273=1939 M W N 275=

A I R 1939 Mad 446=(1939) 1 M L J 227

—S 33—Evidence of person whose presence cannot be secured—Admissibility—Duty of Court to record finding

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—S 34—Accounts—Rokar bahi—Blank spaces left in different places—Extrinsic value

Where a number of blank spaces are left in the rokar

—S 34—Bahi entries—Presumption

There is no presumption of correctness attaching to the entries in the bahis (Addison and Ram Lal JJ)

AHMAD DIN ALLAH DITTA v PARTAP SINGH
41 P L R 373=A I R 1939 Lah 438

—S 34—Entries in books of account—Value of

The rule that plaintiffs' own statement on oath in

along with the plant The tendency on the part of creditors to base their claim solely on entries in Khata Bahi is to be strongly deprecated (Ramsulmal J) PUKHRAJ v GANESHMAL 1939 M L R 216 (Civ)

—S 35—Birth and death register—Entry in—Relevancy and admissibility

S 35 of the Evidence Act makes the entries in the

—Admissibility and value

An entry in the Register of Powers of attorney maintained by the Registering officer under the Registration Act, is undoubtedly relevant under S 35 of the Evidence

EVIDENCE ACT (1872), S. 35.

Act to prove the contents of the power of attorney The

EVIDENCE ACT (1872), S. 43

An entry made a considerable time ago by the patwari

PATTU KUMARI v. NIRMAL KUMAR.

43 C W N. 907 = 70 C L J. 5 = A I R. 1939 Cal. 569.

—S 35—*Khanapuri officer—Decision in settlement proceedings—Admission of parties contained in—Admissibility.*

In a suit to eject the defendants on the allegation that they were under raiyats of the plaintiff, the defendants

of—Order granting letters of administration on condition applicant executes bond—Effect of.

The words 'final judgment, order or decree' used in S. 41 of the Evidence Act in reference to the Probate Court means the judgment, order or decree of such a Court by which the grant is actually issued to the propounder or applicant, for it is only the grant which

was introduced on condition that he executes the usual bond is not a final judgment, order or decree in the above sense. That order can be relevant, if at all, under S. 11 or 13 of the Evidence Act and the Court might

Upon the question whether a talukdar was a convert

The decision of the Admiralty Court restoring the status of a ship which had been suspended so far as the status and is concerned. The decision is person who was not a party to that YOOSAF SAGAR ABDULLA v. S.

S. ELLORA.

A I R. 1939 Sind 319.

—S 41—*Judgment in rem—Judgment of foreign Court declaring party to be adopted son of Hindu widow—If binding in suit relating to immovable property in British Indian Court—Rule—Jurisdiction of domestic Court*

A foreign judgment declaring that a person is the adopted son of a Hindu widow is binding on the Courts

AMAR KRISHNA NARAIN SINGH

1939 O L E 553 = 183 I C 662 = 12 E P C 73 =

6 B R. 1 = 44 C W N 66 =

A I R. 1939 P C 219 (P C)

—S 35—*'Official register'—Book of copies maintained in Collector's office containing copies of communications sent by Collector to subordinate officers—If official register or public document—Certified copy of book*

A certified copy of such a document is clearly inadmissible in evidence, and should not be rejected as being a copy of a copy. (*Varadachariar and A J J*) SEVUGAN CHETTIAR v. ZAMINE GANGA. 1939

—S 35—*Relevancy of patta—Lea Wards—Visible indications of officia though not proved.*

Where a lease printed in the form

declaration of status by a foreign Court in a matter of succession to movable property in British India because

within its territory as being analogous to a judgment in rem. (*Lea & C J and Madhavu Nair, J*) NATA RAJA PILLAI v. SUBBARAYA CHETTIAR

I L R. (1939) Mad. 507 =

49 L W. 287 = 1939 M W N. 180 =

A I R. 1939 Mad. 693 = (1939) 1 M L J. 499.

—S 43—*Admissibility of judgments—Law as to. A judgment is not admissible to prove the truth of the fact which it states, nor is any fact stated as part of the*

—S. 35—*Revenue records—Entry made by patwari in village papers*

EVIDENCE ACT (1872), S 43

reasoning in arriving at the fact in issue evidence of the truth of that fact. But in cases, where the right of a party has already been concluded by previous judgment that fact can be proved by the production of the judgment, since the existence of that judgment itself is relevant (*Stone, C J*).

JAGANNATH DAS

1938 N L J

—S 43—Decision:

found incorrect—Plea of fictitious rental in another suit—Admissibility of the other decision

Where the recorded rent has been found to be incorrect in one particular case then in a similar case of the same tenant where it is pleaded that the recorded rental

1939 A W R (B R) 161

—S 45—Medical evidence as to age—Value—If amounts to legal proof of age

Though a doctor is in a better position to form an opinion about the age of a person than a layman his statement is no more than an opinion and could not amount legal proof of the age of the person concerned (*Jimail and Mulla J J*) *EMPEROR v QUDRAT*

1939 A W R (H C) 693=1939 A C r C 161-

1939 A L J 980=A I R 1939 A l l 708

—S 47—Scope—If contemplates production of copy of document

When a question has to be decided as to the person by whom any document was signed or written then according to S 47 of the Evidence Act the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed is a relevant fact. But the section contemplates only the production of the original document and not a copy of it (*Mukta J M*) *BHARAT SINGH v PATHAK HAR SAHAI*

1939 E D 105=

1939 A W R (B R) 167

—S 49—Unregistered deed of gift—Admissibility to prove collateral purpose

Where a deed of gift contains an agreement transferring one ghumaon of land to the donee and also relinquishment of reversionary rights by a re although it is inadmissible in evidence

A I R 1939 Lah 414

EVIDENCE ACT (1872), S 68

—Ss 57 (6) and 85—Scope—Power of attorney given under seal of notary public—Presumption of due execution before, and authentication by notary public—Duty of Court to raise

The provisions of S 85 of the Evidence Act are not to presume that proper execution duly fulfilled. But are different legal modes of executing a power of attorney under S 57 (6) of the Evidence Act, the Court shall take judicial notice of *inter alia* all seals of notaries public. Where a power of attorney is given under the seal of a notary public the Court must presume its proper execution.

12 B B 192=41 Bom L R 530=A I R 1939 Bom 347

—S 65 (a)—Income tax return—Secondary evidence of—Admissibility

Under S 65 (a) of the Evidence Act secondary evidence of the contents of an income tax return would not be admissible. The Income tax Officer is subject to every process of the Court (*Burn, J*) *VARADA RAJAM CHETTY v KANAKAYYA* 1939 M W N 377=1939 I T R 331=A I R 1939 Mad 546=(1939) 1 M L J 781

—S 65 (e)—“Public document”—Income tax returns—If public documents Certified copies of returns—Admissibility to prove contents thereof—Income tax Act, S 54—Scope and object of

An income tax return cannot be held to be a public document as defined by S 74 of the Evidence Act and cannot be proved by secondary evidence *ie* by the production of a certified copy under S 65 (e) of the Evidence Act. S 54 of the Income tax Act makes it clear that a return made by an assessee cannot possibly be part of the act of the Income tax officer. In that section such returns are made confidential and no Court can require any public servant to produce them before it. If the return is a public document, any person who

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their own private information since that would not

evidence to prove their contents under S 65 of the (*Stodart J J*) *MYTHILI* 60 L W 815=1939 I T R 657.

—S 68—Attestation—Proof of—Mortgage bond—Proof of due execution and execution by evidence of one attesting witness—Another attester not formally speaking to attestation—Deed—If not duly attested

the admission of that statement does not therefore contravene the provisions of S 54 of the Evidence Act (*Henderson and Khundkar J J*) *NITAL KOLEY v EMPEROR* I L R (1939) 1 Cal 337

EVIDENCE ACT (1872), S 68.

Where a mortgage bond attested by more than two witnesses is proved to be duly executed and attested by the evidence of one attesting witness, and is marked as an exhibit without objection, the mere fact that another attesting witness who also examined does not formally prove attestation will not lead to the inference that the latter has not in fact attested the bond. (*Harris, C J. and Chatterji, J.*) **JAI GOBIND SINGH v PACHKAURI RAM.** 5 B E 613=181 I C 572=11 R P. 699=A.I.R. 1939 Pat 555.

—S 68—Construction—Document tendered only to prove an admission—Requirements as to proof of attestation—Necessity.

If S 68 of the Evidence Act was intended to express that a document required by law to be attested should not be used as evidence for any purpose until one attesting witness at least had been called, then the words 'for any purpose' would have no effect in the section. Those words are not therefore to be concluded that intention of the framers of the Act, why an admission in one document is a different kind of proof from an admission in another document. The mere fact that one of the documents requires to be executed with attestation and that attestation must be proved for the purpose of giving legal effect to the document does not appear to have any bearing on the question as to what proof should be given of the

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—S 68 Proviso—Certified copy of registered deed of gift produced in evidence—Party challenging it not denying specifically that it is copy of deed—Production of attesting witnesses, if essential

Where on the production of a certified copy of a registered deed of gift, the party challenging it does specifically deny that it is the copy of the deed, according to the proviso to S 68 the production of attesting witnesses to prove execution and attestation of the deed is not essential (*Bhude, J.*) **NAND LAL v LAKHMI.** AIR 1939 Lah 4

—S 68, Proviso—Construction—Words 'In the Registration Act, 1908' if refers to the particular alone.

EVIDENCE ACT (1872), S 71.

of that particular Registration Act and not of any previous Registration Act (*Wort, J.*) **JADUNATH MITRA v ISAR JHA.** 178 I C 198=5 B E. 65=11 R P. 229=A.I.R. 1939 Pat 47.

—S. 68, Proviso—'Execution'—Meaning of—Mortgage bond.

The word 'execution' as used in the proviso to S. 68 of the Evidence Act in the case of a mortgage bond which under the law requires attestation, means and includes not only the signature of the executant but the whole series of acts or formalities which are necessary to give the document validity as a mortgage. This includes attestation, and if attestation is expressly denied

—S 68 Proviso—Specifically denied—What may amount to

Where a defendant in a suit on a mortgage pleads that the contesting defendant does not admit the execution of the document sued on, nor is of the same admitted, and the trial judge that the in question 'holly contended attestation of the mortgage against his client' in such he execution of the mortgage

se evidence was considered unreliable to assume that the discrepancies were recollection. It was held on the facts that even assuming that it would be legitimate in the above circumstances to look at the proceedings relating to the registration of the mortgage deed for the purpose of proving its due execution and attestation the plaintiffs had failed to prove the material facts necessary to com-

EVIDENCE ACT (1872) S 71

—S 71—*Applicability—One of attesting witnesses summoned but not produced in Court—Duty of plaintiff*

S 71 of the Evidence Act has no application to a case where the attesting witnesses are not before the Court. If therefore the plaintiff takes out summons on one of the attesting witnesses and the witness does not appear in Court, that is not enough to let in further evidence under that section. In such a case it is the duty of the plaintiff to exhaust all the processes of the Court in order to compel the attendance of any one of the attesting witnesses and when the production of such witnesses is not possible either legally or physically the plaintiff can avail himself of the provisions of S 69 of the Act (*Mutherraj and Lattifur Rahman J.*)
HAREKRISHNA PANIGRAHI v JUGHESWAR PONDIA
69 C L J 454 = 43 C W N 1025—

A I R 1939 Cal 688

—S 71—*Proof of attestation by other evidence—Permissibility—Other evidence—If includes plaintiff's evidence*

The word execution in S 71 of the Evidence Act not only means signing by the executant but it means and includes attestation as well. If therefore an attesting witness called by the plaintiff turns hostile the plaintiff is entitled to prove attestation of the instrument by other evidence as laid down in the section. This other evidence includes his is the grantee of
Roxburgh J.

—S 73—*Court—Value to be attached*

—S 74—*Public Collector's office of cop ordinate offices—If put copy—Permissibility*

1939 M W N 841

—Ss 74 and 76—*Public document—Entry in Register of Powers of attorney—Copy of such entry—Admissibility—Registration Act S 69*

The Registrar the Registrar Inspector Registration a public

70 C L J 5 = A I R 1939 Cal 569

—Ss 76 and 77—*Income tax assessment order—Assessee's right to a copy—Admissibility of such copy—Income-tax Act S 54*

Although an income tax assessment order is a public document within the meaning of S 74 of the Evidence

S 77 of that Act a certified copy which may be pro-

EVIDENCE ACT (1872), S 90

duced in proof of the contents of the original order of assessment (*Panchridge J.*)
PROMOTHA NATH v NIRODE CHANDRA
I L R (1939) 2 Cal 394 =

1939 I T R 570—43 C W N 1169
—S 85—*Scope—If exhaustive—See EVIDENCE ACT SS 57 (6) AND 85* 41 Bom L R 530

—S 90—*Applicability—Anonymous document—Presumption—Necessity for proof as to writer—Objection to admissibility—When to be raised*

S 90 of the Evidence Act does not provide for any presumption regarding anonymous documents the writer of whom is not known. But an objection that the document should not be admitted without proof as to the writer of the document must be raised at the earliest stage and cannot be permitted to be raised for the first time in second appeal (*Wadsworth J.*)
CHANDU KUTTY NAMBIAR v RAMA VARMA RAJA
50 L W 527 = 1939 M W N 946 =

A I R 1939 Mad 928 = (1939) 2 M L J 593

—S 90—*Applicability—Copies*

No presumption under S 90 of the Evidence Act can be raised on the basis of the certified copies when the originals are not forthcoming (*Bhadi J.*)
JIWAN v KESHO DASS
41 P L R 377 (2) =

A I R 1939 Lah 273
—S 90—*Applicability—Copies of document*

A I R 1939 Lah 458
—S 90—*Applicability to copy of document*

signature on
an (*Varada*)
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1939 M W N 841

—S 90—*Documents produced as instances of custom—Admissibility without regard to their custody*
In cases where documents more than 30 years old are

erty. But where such a plaintiff produces other evidence including that of one of the identifying witnesses of the executants of the old sale deed it can be held that the evidence is sufficient to prove the due execution of the sale deed in question (*Thom C J.*)
ASA FUD DAULA BEG v RAM NARAIN
1939 A L J 1023 =

1939 A W E (H C) 884
—10—*Presumptio n under—Discretion—Inter-*

appellate Court
atter emmently within the discretion of a
trial Court that of raising a presumption under S 90 of

EVIDENCE ACT (1872), S. 92.

EVIDENCE ACT (1872), S. 92

mistake—Distinction

cuted that it was not to be enforced, but that the amount

unilateral mistake, the position is different, because in that case there is, in fact no contract. The minds of the parties were not at one, one intended one thing, and the other intended something else, and if any relief can be granted, it must be rescission. But at that point the

promissory
age of S. 92,
(Wadia and
LYANDAS v
1 L.R. 1263

—S 92, Proviso 3—Scope—"Condition precedent"
—What is—Promissory note payable on demand—
Indorsee's suit against maker and indorser—Plea by
former of oral agreement between him and indorser
that plaintiff was to look to indorser only—Evidence to

part of evidence would be admissible under S. 92

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—S. 92,

second proviso to S. 92, EVIDENCE ACT, provided for
proving the existence of a separate oral agreement to the
effect that the vendee would proceed no further in the
prosecution of his claim for certain money debts not
specified in the deed of conveyance and the vendor cannot
be prevented from attempting to prove that there
was such an agreement (James and Rouland, JJ.)
RANBAHADUR SINGH v. AWADHBEHARI PRASAD
SINGH 18 Pat 312=11 R.P. 575=

181 I.C. 184=5 B.R. 537=A.I.R. 1939 Pat 411

—S. 92, Proviso (2)—Interest—Agreement as to

contemporaneous oral agree
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contract must be distinguished
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he promissory note. If the
suspend the coming into

In a suit on a promissory note
instituted by the indorsee thereof
and the indorser (original payee), the
maker of the oral agreement between himself and the
original payee, of which the plaintiff (endorsee) had
knowledge, that the maker was not to be made liable
under the note but that the plaintiff was to look only to
his indorser, and that so far as he the maker was con
cerned, the promissory note was not binding on him.

Held, that evidence of the oral agreement was not
admissible under S. 92 of the Evidence Act (Dawar,
J.C. and Weston, J.) TYABI TRADING CO., LTD. v.
GHULAMALI 1 L.R. (1939) Kar 523=

184 I.C. 867=A.I.R. 1939 Sind 299.

EVIDENCE ACT (1872), S. 92.

money for a contract of purchase by the plaintiff, that the purpose of the receipt of money has been wrongly stated in the promissory note, and that it was not intended to attach any obligation to the instrument as such, he is entitled to adduce oral evidence in support of such plea. S 92 does not bar oral evidence to prove the same (*Dhale, J.*) UMRAO SINGH v RAUNAK SINGH. 5 B R

EVIDENCE ACT (1872), S 106

case such evidence was not produced he must suffer the consequences (*Kichlu, J.*) KASHMIROO v MST. ACHHRI 41 P L R J. and K. 21.
—Ss 101 and 102—Cause of action arising out of Marwar — Defendant objecting to jurisdiction of Marwar Courts — Onus of proving their jurisdiction.
Where the cause of action arose in British India and

upon the plaintiff (*Ranjitmal J.*) JUWARMAL v. DOLICHAND. 1939 M L R. 149 (Civ.)

—S 101—Consideration—Recital of payment in bond—Third party denying consideration—Onus of proving payment.

Though as between parties to a document the admission or proof of execution would shift the onus on to the party denying consideration, yet a person who is not a party to the document in question cannot be held liable unless there is evidence to prove that the money was actually paid (*Nawal Kishore, C J.*) ANOPSINGH v. LALSINGH. 1939 M L R. 118 (Civ.)

—S 101—Suit against mortgagor's heir—Defendant denying execution—Execution proved—Passing of consideration—Presumption.

In a suit against heir of a mortgagor who denies knowledge of the transaction, the plaintiff should be deemed to have made out a *prima facie* case as to the passing of the consideration also, if he proves execution and exhibits the documents containing recital as to the receipt of the consideration by the mortgagor whose heir the defendant is (*Ranjitmal, J.*) BAJDAN v. SHIV BUX. 1939 M L R. 86 (Civ.)

—S 103—Bond—Consideration different from that recited—Onus of proving full consideration.

Where it is established that the consideration for the bond is different from that recited in the bond, the onus shifts on the plaintiff to prove affirmatively that the bond was executed by the defendant for the full consideration (*Nawal Kishore, C J.*) ABDUL GAFOOR v. PARSRAM. 1939 M L R. 12 (C.)

—S 105—Scope and effect of—Article hired by person and in his exclusive possession—Damage to—Plea of ordinary wear and tear—Onus

Where an instrument hired by a person was for all practical purposes in his exclusive possession, it is for him to explain how it came to be damaged. It is for him to establish that it was a case of ordinary wear and tear and not of carelessness or negligence in any degree. (*Lobo, J.*) BACHRAI FACTORIES, LTD v. BOMBAY TELEPHONE CO, LTD 184 I C 36=12 R S 83= A I R 1939 Sind 215.

—S 105—Scope—Prosecution not proving case—Accused not proving exception pleaded—Right to acquittal

Even in a case to which S 105 applies, an accused may rely upon an exception in his defence and fail to

08—Scope—Accused—If liable to discharge of proving innocence as never intended to be used to place upon the burden of proving their innocence.

—S. 92. Pro.

executed by agriculturist as sale—Evidence to prove that deed was mortgage and not sale—Admissibility

S 92, Proviso 6, does not apply to a case where a document is clear and unambiguous in its terms. Where a document executed by an agriculturist is on the face of it a sale deed but is alleged to be only an ostensible deed of sale being in reality a mortgage, and in a suit by the executant for redemption of the mortgage he pleads a contemporaneous oral agreement to re-convey, but it is proved that the executant is not an agriculturist, the beneficial provisions of S 10 Deccan Agriculturists' Relief Act, cannot be taken advantage of, so that even assuming the case of the executant to be true, so far as parties to the transaction are concerned, he cannot bring either direct or circumstantial evidence to show that the document was intended to operate as a mortgage and not as a sale-deed. He can, however, show as against persons who are neither parties to the transaction nor are representatives in interest of any such parties that the deed purports to be a mortgage and not a sale. (*Davis, J.C. and Weston, J.*) MILKIMAL v. TOTOMAL. I L R (1939, Kar 530=184 I C 677= A I R 1939 Sind 200

—S 92, Proviso (6)—Evidence of conduct—Admissibility

Where the terms of a written contract are perfectly clear the necessity of deducing the real terms from the conduct of the parties and the reconstituting of the contract in accordance therewith does not arise. (*Almond, J.C. and Soofi, J.*) HAJI KHAN GUL KHAN v. CHOTHU RAM 184 I C 585 (2)=12 R Pesh 29= A I R. 1939 Pesh 41.

—S 94—Applicability—Principle underlying—Application to amend mortgage deed, preliminary and final decrees See C. P. CODE, SS 151, 152 AND 153 1939 A W R (H G) 173

—Ss 101 and 102—Allegation that transfer is in violation of S 12 of C. P. Tenancy Act—Burden of proof

It is on the person who asserts that a transfer is in contravention of S 12 of the C P. Tenancy Act that the burden of proving it lies, for it is his application that would fail, if no evidence at all were given (*A L Binney, F. C.*) MANIKRAO v RAMCHANDRA 1938 N L J 474.

—S 101—Bond—Recital as to consideration—Burden of proving that recital is untrue

Where a mortgage bond contains a consideration had been received by the burden lies upon the executant or his prove that the recital was untrue and a Court how he became a party to a contained an untrue recital (*Ranjitmal, J.*) SHIV BUX 1939 M

—S 101—Burden of proof—Duty

EVIDENCE ACT (1872), S 106.

S 106 is not a proviso to the rule that the burden of

wife against husband—Accused having special means of knowledge as to whether crime has been committed—If absolves prosecution from proving fact of commission of crime See CRIMINAL TRIAL—BURDEN OF PROOF

1939 M W N 883

—S 106—Special knowledge—Fact of marriage—Option of puberty—Onus. See MAHOMEDAN LAW—MARRIAGE OPTION OF PUBERTY.

1939 A W R (H C) 811

—S 110—Possession—Presumption of ownership

By virtue of S 110 of the Evidence Act a person in possession is deemed to be owner until the contrary is shown (*Skimp, J*) PARIT SINGH v AJUMAN INDAD QAEZA 41 P L R 123

—S 114—Presumption—Extent of—Woman sleeping in room containing two cots—Presumption that her husband must have slept on other cot on particular night—If justified

The illustrations to S 114 show the extent to which Court may draw presumptions and clearly S 114 is no justification for a Court presuming without evidence that because a woman sleeps in a room with two cots, her husband, an inmate of house, must have slept on the other cot on a particular night (*Datt, J C and Weston, J*) SHEWAKRAM ISSARDAS v EMPEROR 180 I C 464 = 12 R S 8 = 40 Cr L J 661 =

A I R 1939 Sind 130

—S 114—Scope—Mother and daughter dying together in earthquake—Presumption that mother died first—If arises.

Where a mother and daughter met their death in the Quetta earthquake and there is no reliable

Absence of evidence to show—Effect of.

The mere fact that there is no evidence to show that certain land which is the subject matter of a settlement in a tauli was demarcated, does not give rise to a presumption that there was no demarcation, such an assumption is clearly against the statute of the land. If an official act has been proved to have been done it must be presumed to have been done (*Agarwala, J*)

Agarwala, J

accused to explain—Effect

The question whether an inference should be drawn against an accused person from unexplained possession of property concerned in an offence with which he is charged may sometimes be very strongly affected by the interval between the date of the offence and the date when the property is found to be in his possession. If

EVIDENCE ACT (1872), S 114

an accused person is found to have in his possession, after a considerable time

ERAPPA

17 Mys L J. 158

—S 114, Ill. (a)—Order of attachment—Compliance with formalities—Presumption, when process-server's report is available—C P Code, O 21, R 54.

If the only evidence available is an order of the Court showing that attachment had been made, it would no doubt be presumed that all the necessary formalities were complied with. But where the execution record is available and the process server's report regarding the attachment does not show that any copy of the order was posted on a conspicuous part of the Court house, the initial presumption is what is not mentioned therein was not done (*Bhidi, J*) MAIDATI MANAK CHAND v. MST LACHHO. 41 P L R 149 =

A I R 1939 Lah 284.

—S. 114, Ill (a)—Presumption under—Nature of

The Court is entitled to presume that a person found in possession of property which had been stolen is either the receiver or the actual thief. The nature of the presumption in each individual case depends entirely upon the nature of the evidence adduced. Where a long interval has elapsed before the stolen property has been recovered it is often unsafe to assume that the possessor is the actual thief. The highest presumption which can be drawn from possession of stolen property by itself, and in the absence of any other evidence, is presence at the scene of theft. Where it is shown that only one person is present at the scene of theft and it is clear that the murder has been committed, the logical conclusion to be drawn from that is that the possessor of the stolen property is the murderer, but in such a case care must be taken to ensure that the property is really found in

12 R R. 155 = A I R. 1939 Rang 361

—S 114, Ill (a)—Scope—Charge of murder, robbery and receiving stolen property—Murder and robbery alleged to be simultaneous and part of same transaction—Finding of articles concerned in robbery in possession of accused—Nature of presumption to be drawn

On a charge under Ss 302, 392 and 411, I P Code, prosecution that murder and robbery were simultaneous

ed to the murder and robbery or at least received stolen property knowing the same to be the proceeds of the robbery. But when the question arises whether the presumption of the graver offence or of the lesser offence is to be drawn, it is for the prosecution to establish the graver presumption rather than for the graver presumption to be drawn in the absence of an explanation from

EVIDENCE ACT (1872), S 114

the accused. The Court must see if there are materials to show that the accused was not merely a receiver of stolen property but was himself the murderer or actively concerned in the murder. (*Varma and Rowland, JJ*)
EMPEROR v MAYADHAR POTHAL.

18 Pat 450 = 5 B R 706 = 181 I C 1001 =
 11 B P. 653 = 40 Cr L J. 625 = 1939 P W N 300 =
 20 Pat L T. 420 = A I R 1939 Pat 577

—S. 114, III. (b)—“Accomplice”—Witness revealing knowledge of intended crime to authorities if accessory or accomplice.

The mere fact that a witness did not reveal his knowledge of the intended crimes to the proper authorities is not sufficient to make him an accessory or an accomplice so as to vitiate his evidence. (*Bartley and Rau, JJ.*) **NURALAMIN v. EMPEROR.**

A I R. 1939 Cal. 335.

—S. 114, III. (b)—Testimony of approver—Retracted confession of accused—If corroborative evidence

The evidence of an approver who does not scruple to tell different stories on different occasions on oath is not a very strong basis for a conviction though undoubtedly legally it could be such. The retracted confession of a co accused cannot be considered to be sufficient corroboration of his evidence. (*Young, C J and Blacker J*)
FAQIR SINGH v EMPEROR

181 I C 219 =
 12 B L 183 = 40 Cr L J 897 = 41 P L R 333 =
 A I R 1939 Lah 429

—S 114 (c)—Presumption under when arises—Person affixing thumb mark to bond, pleading fraud—Burden of proof

In a suit on a bond the primary burden is on the plaintiff. He must prove execution and consideration.

11 B N 358 = 1938 N L J 459 =
 A I R 1939 Nag 78

—S 114 III (g)—Scope—Accounts produced by defendant late—Retraction—Opposition by plaintiff—Right of plaintiff to request Court to draw adverse inference

Where a defendant fails to produce his account books before the Court in time, and they are rejected by the Court when produced as having been produced too late the penalty for this conduct of the defendant is only to

affected.

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—S 115—Admission—Inference from conduct—Value of.

An admission inferred from conduct does neither amount to an estoppel nor is a conclusive proof of the matter admitted, but it is certainly a strong *prima facie*

EVIDENCE ACT (1872), S. 115.

evidence and may be conclusive when not rebutted by any evidence. (*Nawal Kishore, C.J and Sukhdewanara*)

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the position. A I R. 1939 Lah 600. Full. (*Addison and Ram Lal, JJ*) **MT BIBI KUNDO v. ONKAR NATH.** 183 I C. 645 = 12 B L 126 = 41 P L R 312 =
 A I R. 1939 Lah. 63.

—S. 115—Conduct—Encroachment of land by erection of building—Owner failing to raise objection—Estoppel

A person is not justified in keeping silent when he is aware that another person has encroached upon his land and is erecting a costly building. He will be estopped by his conduct from claiming possession of the area encroached upon by demolition of the construction erected thereon. (*Bhide, J*) **MUL RAJ v JANESHWAR LAL**

41 P L R. 578.

—S 115—Erroneous statement by Counsel—Client, if estopped

An erroneous statement made by counsel in the course of argument cannot estop the client from taking the correct legal position afterwards. (*Bhide, J*) **ALLAHABAD BANK, LTD v PUNJAB NATIONAL BANK**

A I R. 1939 Lah 308.

—S. 115—Landlord and tenant—(conduct)—Admission—Sufficiency to attract operation of section.

Where after a decree for payment the defendant

within the meaning of S 115 of the Evidence Act. (*Bomford, S M*) **TOPIA RAM v RAM PRASAD.**

1939 R D 135 = 1039 A W R (B R) 149.

—S 115—Mistake—Failure to recover tax by municipality owing to mistake—Recovery later on—Plea of estoppel in defence

Where a municipality owing to some mistake failed to recover a particular tax, it cannot be pleaded that they are estopped from recovering it when they later on make attempts to collect it. The plea cannot enable a

himself as an executor under a mistake about his legal

not make him an executor or raise

him (*Mr Jankar*) **ATISUKH.**

6 B R 26 = 183 I C. 885 =
 12 R P C 78 = 1939 O L R. 586 =

A I R. 1939 P C. 238.

—S 115—None against statute.

There can be no estoppel against an act of the legislature. When therefore the legislature has declared that no adoption would be valid without a registered

EVIDENCE ACT (1872), S 115

tion deed the plaintiff is not estopped by her conduct from disputing the validity of the defendants' adoption for want of a registered deed (*Ranitmal and Sukhdonarain JJ*) *FOJMAL v MAT SINGARI* 1939 M L R 60 (c)

—S 115—Question of law

There can be no estoppel on a statement of law relating to the validity of nomination of a person as a chela under the terms of a will (*Mf Jayakar*) *KARTAR SINGH v DAYAL DAS* 5 B R 868 12 R P O 23= 1939 A L J 809=182 I C 753= 1939 O L R 439=1939 O W N 631= 43 C W N 1037=1939 A W R (P C) 108= A I R 1939 P O 201 (P C)

—S 115—Representation—Act or omission when amounts to—Landlord and tenant *See* LANDLORD AND TENANT—PERMANENT TENANCY

A I R 1939 Pat 296

—S 115—Representation—Change of position

One essential element of estoppel is that the party raising the estoppel actually suffers a detriment on the faith of the statement (*Skemp, J*) *ABDULLA v A*

41 P L E 41

—S 115—Scope—Fngt

S 115 represents or is the same in England (*Wort, J*) *R BIBI ZUHRA*

12 R P 3

—S 115—Silence—Enormity to object—Estoppel

Where a person knowingly encroached upon his land by keeps silent and raises no objection he is estopped from bringing a suit for land encroached upon by *MOOL RAJ v JANESHWAR I*

—S 116—Denial of title of landlord or successor—Estoppel

S 116 does not estop a tenant from denying the title of his landlord or successor in possession (*Havali*) *LE 316=* A I R 1939 Lah 49

—S 116—Plea of loss of title, subsequent to tenancy—If open to a tenant

In a suit by a landlord for rent it is open to the tenant to plead in defence, subsequent to the tenancy, that the title has passed to somebody entitled to the rent, and that the landlord prevented a tenant from bringing a suit for the original lessor has no title (*LUCKMAN CHAPLA*)

1939 A W R (H C) 516=1939 R D 402= 1939 A L J 913= A I R 1939 All 670

—S 118—Child witness—Capacity to understand—Court's duty to test

S 118 of the Evidence Act vests in the Court the discretion to decide whether an infant is or is not disqualified to be a witness by reason of understanding or

EVIDENCE ACT (1872), S 124

and *Khundkar, JJ*) *KRISHNA KAHAR v EMPEROR* 43 C W N 1117

—S 118—Child witness—Duty of Court

Where a young child is called as a witness the first step for the Judge or Magistrate to take is to satisfy himself by questioning the child that it is a competent witness within the meaning of S 118 (*Mya Bu and Dankley, JJ*) *AM PHUT v THE KING*

A I R 1939 Rang 402

—Ss 123 and 124—Accidents' register kept by doctor—If privileged document

The accidents' register kept by a medical practitioner is not a privileged document and a Magistrate cannot therefore refuse to cause production of the same (*Lakshmana Rao J*) *VENKANNA v EMPEROR*

1939 M W N 1128 (2)=50 L W 796 (1)

—Ss 123 124 and 162—Relative scope and effect—Claim to privilege—Sustainability—Conditions—Test

Wasoodew J—S 162 of the Evidence Act deals

claimed. It should be claimed at the earliest opportunity, and it is futile to claim the privilege at a late stage when there has already been a disclosure of the document given in charge of the Court (*Wasoodew and Sen, JJ*) *BHALCHANDRA DATTATRAYA v CHANBASAPPA MALLAPPA* 183 I O 225=12 E B 69= 41 Bom L R 391= A I R 1939 Bom 237

—S 124—Disclosure if would harm public interests—Who is to decide—Function of a Court in relation to claim of privilege

The contents of such papers has not been made known in confidence (*Hamilton, J*) *CHANDRA DHAR*

NOW 14 Luck 351=11 R O 148=178 I O 982= 1938 O W N 1354=1938 A W R (C O) 140= 1939 O A 85= A I R 1939 Oudh 65

—S 124—Object—Disclosure already made to a person not in confidence—Section if applies

S 124 of the Evidence Act is designed to prevent the knowledge of official papers beyond that circle that

But such a course should be pursued where the circumstances of the case make it plainly desirable (*McNair*

the contents of such papers has not been made known in confidence (*Hamilton, J*) *CHANDRA DHAR*

EVIDENCE ACT (1872), S. 124.

T .

—S 124—*Privilege—Claim to—Conditions—Communication to public officer in official confidence—Considerations for Court.*

For the purposes of S. 124 of the Evidence Act, communication has to be made to the public officer who considers that the public interest suffers by its disclosure. It is for the Court to decide whether or not a particular document for which privilege is claimed was a communication made to a public officer in official confidence and if the Court decides that it was so made, then it has no authority to compel the public officer to produce it, for the public officer himself is the sole judge as to whether its disclosure would or would not be in the public interests. Where the statement contained in the document was not intended to be made in confidence, it is not, however, enough for the public officer to merely claim privilege. He must apply his mind to the question whether public interests are likely to suffer by the disclosure of the contents of the document called for; and only if he considers that public interests would suffer by such disclosure, would he be entitled to claim privilege. (*Wastoolaw and Sen, JJ*)
DATTATRYA v. CHANBASAPPA MA
 183 I.C. 225—12 R.B. 69—4

A.L.J. 1939 P.W.D. 201.

—S. 124—*Privilege—Duty of authority claiming*

1938 O.W.N. 1354—1938 A.W.R. (C.C.) 140—
 1939 O.A. 85—A.I.R. 1939 Oudh 65.

—S 124—*Public officer—Agent of Railway company—C.P. Code, S. 2 (c)*

The Agent of a Railway officer as defined in S. 2 (c) has power under S. 131

12 R.C. 113—182 I.C. 870—43 O.W.N.

A.I.R. 1939 C.

—S. 124—*Public officer—Meaning of—Court of Wards—If come under the section.*

The most reasonable construction of the term 'public officer' in S. 124 of the Evidence Act derived from the section itself. He is public as opposed to private duties who communications made to him in official confidence that disclosure in certain cases public interests. The Court of Wards, if of S. 124 is to be considered as a Government officer. (*Hamilton, J.*) *CHANDRA DHAR TEWARI v. DEPUTY COMMISSIONER, LUCKNOW*, 14 Luck. 361—11 R.O. 148—178 I.C. 982—
 1938 O.W.N. 1354—1938 A.W.R. (C.C.) 140—
 1939 O.A. 85—A.I.R. 1939 Oudh 65.
 —S 132 Proviso—*"Compelled"—Meaning of—Evidence given by witness for prosecution in prior case—Admissibility against him in subsequent case against him as accused.*

EVIDENCE ACT (1872), S. 145.

The proviso to S. 132 of the Evidence Act can be reasonably interpreted as giving protection to witnesses really giving evidence which is elicited from them in their examination and given by them in the course of their duty to state truthfully what they know about the case but not so as to protect witnesses who take the opportunity of being in the witness box to say things which by no stretch of language it could be properly represented they were compelled to say within the meaning of the proviso. A witness called to give evidence for the prosecution in a case is intended by S. 132 to be protected in respect of what he says in the course of his examination from having that evidence used against him when he is an accused person. Such evidence given by an accused person as a witness in a previous case cannot be used against him when he is on trial as an accused. (*J.*) *SUNDA-*

**ys H.C.R. 675.

—S. 132, Proviso—*Compulsion—What amount to*

The compulsion contemplated in the proviso to S. 132 of the Evidence Act is something more than being put into the box and being sworn to give evidence; the compulsion is that which would lead a witness to answer questions which he does not wish to answer.

amount to compulsion. If he hesitates to answer and the Court tells him he must answer the question, the action of the Court to the witness within the proviso. (*Baguley, J.*) *RASOOL BHAI Rang L.E. 479—184 I.C. 566—
 159—A.I.R. 1939 Rang 371*

—Ss. 133 and 114, Ill. (b)—*Accomplice as witness.*

There is nothing improper in tendering an accomplice as a witness apart from any question of pardon. Such a

pardon. The evidence is of value a strong any criminal treated with

—S 145—*Applicability—Illiterate person.*

—S 145—*Approver going back on confession—Use of such confession—Extent.*

Where an approver goes back upon his confession, it can be used to contradict him when he is treated as a hostile witness, but it is not substantive evidence and cannot be used to contradict a co-accused's confession. (*Niyogi and Pollock, JJ.*) *BALIRAM SIN v. EM-PEROR*, 184 I.C. 274—12 B.N. 106—40
 1939 N.L.J. 442—A.I.R.

EVIDENCE ACT 1975 S 145

—S 145—Previous deposition of witness—Contradiction—*Fact of*

A witness cannot be allowed to impeach the credit of a witness by showing that he had in a previous deposition given statements which are contradictory to his subsequent statement unless his attention was called to those parts of it by which it is intended a contradiction (Vazir & Anor v G f and Rammalal f) 40 C.L.J. 393 = 1939 M.L.J. 71 C.L.J.

—S 145—Proof of previous statement—Necessity for

There is no law cast upon counsel who wishes to cross-examine a witness by putting to him a previous statement first to prove that statement. A witness denies it has to be read with S 102 Cr P Code and quite clearly it is that the attention of a witness is to be called to the previous statement so as to be able to be proved. If the witness denies the previous statement or explains any discrepancy or contradiction, it obviously makes it necessary for the statement to be read after to be proved. On the other hand, if the statement is required to be proved that can be done after by calling the witness to prove that the statement was made (Vazir & Anor v G f and Rammalal f) 40 C.L.J. 393 = 1939 M.L.J. 71 C.L.J.

—S 145—*Fact of* as a *fact of* case—*Case of*
A representation by a party under O R C P Code can be used as a previous statement to impeach the statement made by a witness under S 145 if the evidence is (Shah f BEHAL LAL v RAMPUR) 41 E.L.R. 622 = A.L.J. 1939 Ind. 622

—S 145 and 146—145 if oral S 146—*Questions about oral statement made—If can be taken*

S 145 if the evidence is taken as a statement influenced by any consideration derived from the previous state of the law or the English law upon which it may be founded. It makes no mention of oral statements. It therefore cannot control S 157. Hence questions with reference to statements made by one witness to another are equally admissible, though the Court could refuse to rely on them on the ground that they are not to be taken as statements or explanations (Vazir & Anor v G f and Rammalal f) 40 C.L.J. 393 = 1939 M.L.J. 71 C.L.J.

—S 155—If control S 145—*See L. 114 C.L.J. 393, S 145 and 155* 1939 M.L.J. 421

—S 157—Cooperative evidence—Admissibility

In a litigation between a nephew and his uncle in respect of certain land the nephew got a decree on his uncle's behalf to give him possession in spite of the decree the nephew had to resort to Criminal Court without success. One day while the uncle and nephew were together in the field, the nephew was accompanied by a friend bringing a basket of wheat from the disputed field. The nephew was not read and the friend was alleged to be the murderer. On the day of the prosecution and the nephew were together at the place. On behalf of the prosecution there were two other independent witnesses who were in the neighbourhood of the place at the time of the crime. They said that they heard two shots, went to the scene of murder and found the nephew dead and were told by the nephew's friend that he had murdered him.

It is held that the statements of the two independent witnesses were admissible under S 157 to corroborate the nephew's statement that he charged the friend with the murder (Fazir & Anor v G f and Rammalal f) 40 C.L.J. 393 = 1939 M.L.J. 71 C.L.J.

EVIDENCE ACT 1975 S 146

—S 146—

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EVIDENCE ACT 1975 S 147

—S 147—*Fact of* as a *fact of* case—*Case of*

A representation by a party under O R C P Code can be used as a previous statement to impeach the statement made by a witness under S 145 if the evidence is (Shah f BEHAL LAL v RAMPUR) 41 E.L.R. 622 = A.L.J. 1939 Ind. 622

—S 147 and 148—147 if oral S 148—*Questions about oral statement made—If can be taken*

S 147 if the evidence is taken as a statement influenced by any consideration derived from the previous state of the law or the English law upon which it may be founded. It makes no mention of oral statements. It therefore cannot control S 157. Hence questions with reference to statements made by one witness to another are equally admissible, though the Court could refuse to rely on them on the ground that they are not to be taken as statements or explanations (Vazir & Anor v G f and Rammalal f) 40 C.L.J. 393 = 1939 M.L.J. 71 C.L.J.

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tection his interest in some of the items of the mortgaged property, but it was a legal representative of the mortgagor who in effect sought the specific performance of an agreement entered into between him and his transferee for payment of a portion of the amount due in respect of the decree, it was held that there was nothing to justify the Court to accede to such a request to fetter the rights of the decree-holder by laying down the order in which the properties are mortgaged are to be sold. (*Iqbal Ahmad and Verma, JJ*) KARIMUL RAHMAN KHAN v. SARASWAT LAHORE. I L R (1933) All

12 R A

1939 A W R. (H O.) 17 =

—Executing Court—Powers of—Power to go behind decree—Decree on unregistered property—See C. P. Code, Sec II, PARA 20 43 =

—Executing Court—Power to allow application for execution not properly made within 12 years of decree See C. P. CODE, S 48.

1939 M. W. N. 988

—Executing Court—Power to go behind decree. Every decree, order or judgment, however erroneous, carries with it an initial presumption of validity until and unless set aside or declared invalid, and is not, therefore, open to the Court behind it. (*Nawal Kishore, C.*) BALKISHEN.

—Executing Court—Power to go behind decree—Decree passed against person as executor—Objection by latter in execution on ground that he had ceased to be executor at time of decree.

The Executing Court would be competent to refuse to execute a decree only when on the face of the decree it would appear that the Court which passed it had no jurisdiction. Consequently an executing Court is not entitled to go behind a decree passed against a person as executor of an estate on his objection in execution proceedings on the ground that he had ceased to be executor before the institution of the suit the decree was passed. (*Mitter and Khundke*) JATINDRA MOHAN BANERJEE v. RAJLAKSHI 43 C. W.

—Executing Court—Power to go behind decree—Void and voidable decree—Distinction—Decree, when a nullity—Refusal of execution—When justified. See DECREE—VALIDITY 1939 P W N. 631.

—Jurisdiction—Pecuniary jurisdiction of Court—

the plaintiff valuing his relief for Rs 5,000 suit in the Court competent to try a suit of that limit of the ordinary jurisdiction and the Court granted a decree. (*Baguley and Mo*) FATHER RIQUEFREV.

181 I O 841 = 12 R R. 498

—Limitation—Order rendering execution abortive—Decree-holder if relieved from keeping decree alive.

An order which would have the effect of rendering execution proceedings abortive does not relieve the

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—Procedure—Court passing decree legally directed to stay execution—If can recall certificate for execution issued to another Court. See UNITED PROVINCES ENCUMBERED ESTATES ACT, S 7.

1938 A W R. (H C) 853 =

1939 A L J 13 (F B.).

—Procedure—Decree against ghatwal—Attachment of surplus income of ghatwal—Execution—Mode of—Proper procedure—Appointment of receiver

Where the surplus profits of a ghatwal estate are attached, the Court should not order the attachment of the

nance of the judgment-debtor and his family and the Court should not order the attachment of the creditor's property. (*J.*) BANSIDHAR

= 11 R P 436 =

1939 P W N 86 =

A I R 1939 Pat 242.

—Revival—Continuation—Second attachment—Type of property to be same.

A subsequent application for attachment would be a continuation of a prior one, only when the type of the property attached is the same.

—Revival—Order dismissing execution case—If final order—Order is final—Subsequent application for execution—If fresh application or continuation of prior one

When the order of executing Court was to the effect that the execution case be dismissed on part satisfaction with costs and the Court was not moved to review that order, nor was any appeal presented to any superior Court to revise or vacate it, the order is an order finally

—Right to—Compromise decree against X and Y—X to be proceeded against in first instance—Execution against X unsuccessful—Decree holder's right to proceed against Y.

decree passed against X was to be paid by X in

execution against him by way of arrest. X applied for time for payment and the decree holder agreed to give him three months. After the expiry of this period execution by way of arrest was renewed but it was found

within the meaning of the decree in proceeding against X, and that having done so without effect, he was entitled to proceed against Y in execution. (*Lord Mac-*

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null and void

A sale in execution is not a nullity even if it is not preceded by an attachment. Neither R 30 nor R 64 of O 21 C P Code negatives the power expressly

J) NAMDEV

Bom 420=

u L R 463=

A I R 1939 Bom 277

—Sale—Binding nature—Suit to recover possession of part of property sold—Maintainability

When an execution sale has been confirmed by the Court and has become absolute under C P Code it must be considered aside. Where a suit is brought for sale of part of the properties so mortgage decree on the allegation that an area in excess of that covered by the mortgage decree had been sold it is in substance a suit to avoid an auction sale held in execution of a decree and is hence not maintainable.

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below purchase price from decree holder—C P Code O 21 R 93

Per *Full Bench*—If a decree is sold in execution of a decree against (the sale proclamation saying that interest only of the judgment debtor's movable property and such recovered by its true owner from the auction purchaser is entitled to decree holder the money which he found that there has been a total failure of

has been deprived of the property purchased by him after the sale has been confirmed and by reason of the intervention of the true owner upon the ground that the judgment debtor had no saleable interest in the property.

Per *Baguley J*—It is conceded that if the judgment debtor has some interest in the property sold there is no guarantee by any party or by the Court as to the extent of that interest and if that interest is sold the sale becomes absolute and no more can be said or done about it in the absence of misrepresentation, fraud, etc. On the other hand, when the judgment debtor has no attachable interest at all nothing has been sold and if nothing is sold there is no sale. Nothing to become absolute and nothing. There is simply a payment of nothing.

Per *Sharpe J*—The whole basis of a sale of movable property is that it is a sale by the Court or not is that something is sold. That basis is unchanged even in cases where the sale is by the Court in execution of a decree the sale proclamation saying that only the right title

EXTRADITION ACT (1903) 7

debtor is being sold. In respect that nothing whatever purchaser has paid the of consideration and the back purchase money as his use (*Roberts C J*)

Baguley and Sharpe JJ MAUNG AVE MAUNG V A SCOTT & CO 1939 Rang L R 649 (F B)

—Sale in pursuance of order in partition suit—Sale subject to confirmation of Court—Person making highest bid in excess of reserve price—Right to have sale confirmed—Offer of higher price by another after sale—If ground for refusing to confirm

The fact that a sale is subject to the confirmation of the Court does not mean that the Court shall refuse to accept the highest bid because at a later stage some one on second thought says that he is willing to pay more. The condition on that the sale is to be subject to the confirmation

against irregularity sale and against proper price. A purchaser which is in excess of the reserve price agreed upon and complies with all the requirements of the Court is entitled to have the sale confirmed when there is no irregularity. The mere fact that between the sale and the confirmation a higher price

is no ground for refusing to h C J and *Kunhi Raman J*) KHAKA MAHOMED ISMAIL 699=1939 M W N 1115 (1) (XV OF 1903) S 7—Arrest Political Agent—Legality—Cr

—A person who has committed an extradition offence and a without a such State. If he be illegal and the 91 (1)(d) Cr P AM v EMPEROR 41 P L R 339

cessary that it should If a warrant directs to a frontier police sufficient indication of y is to be made. An undated warrant is not illegal although the better practice is to date it (*Lord Tankerton*) C P MATTHEW v DISTRICT MAGISTRATE OF TRIVAN I L R (1939) Mad 744= 41 Bom L R 1119=40 Cr L J 675= 1939 A L J 836=70 Cr L J 270=

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—Ss 7 and 8 A—Issue of warrant—Question if

arrested and delivered to the Police of a Native State the question whether the conditions laid down by the Act and the rules for the issue of the warrant were complied with would not be properly the subject of inquiry by the High Court on an application under S 491 Cr P Code.

EXTRADITION ACT (1903), S. 7.

but should be raised before the Magistrate in British India before whom the person arrested is produced on an application to him to report to the Local Government under S 8-A of the Extradition Act (*Lord Thankerton*.) C. P. MATTHEW v. DISTRICT MAGISTRATE OF TRIVANDRUM I L R (1939) Mad 744 = 41 Bom L R 1119 = 40 Cr L J 675 =

50 L J 1939 A W R. (P C) 141 = 43 C W N. 981 = 1939

A I. —S 7—Warrant directing delivery of arrested person to Police of native state for production before District Magistrate of that state—High Court ordering issue of writ of habeas corpus—Application for quashing of order—*per se* valid at District Magistrate's

Held, that the District Magistrate mentioned in the warrant had *locus standi* to file an application for the quashing of the order of the High Court, although he was not a party to the application for the issue of the writ of habeas corpus (*Lord Thankerton*) C P. M A

40 —S 7—Warrant under—Powers of High under S 491, Cr. P. Code, with reference to S P. CODE, S. 491

—S 22—Political Agent Where it is extradition is to offences which of the offence made falls wit of the Extradition Act, and makes it the duty of the Political Agent, in such an event, to demit the prisoners to his custody. (*Lor* C T

50 1 20 P L T 597 = 1939 A Cr C 110 = 5 B R 841 = 1939 A W R. (P C) 141 = 43 C W N. 981 =

FACTORIES ACT (1934), S. 77.

43 of the Factories Act. The word "or" occurring between one sub clause and another in R. 112 (c) cannot be interpreted in such a way as to make the sub-rules alternative (*Varma, J.*) GURSARAN LAL v. EMPEROR 5 B R 207 = 179 I C 170 =

11 R P. 333 = 40 Cr L J 160 (2) = 1938 P. W. N. 903 = A I R. 1939 Pat 163.

—S 71—Claim to exemption from liability—Burden of proof

Under S 71 of the Factories Act, the person who claims the exemption from liability on the ground that he used due diligence and that another person than himself was responsible for the offence, has the onus on him to show that he comes within the provisions of the section (*Varma J.*) GURSARAN LAL v. EMPEROR

5 B R 207 = 179 I C 170 = 11 R P 333 = 40 Cr L J 160 (2) = 1938 P. W. N. 903 = 1939 Pat 163.

Procedure under d conviction of v—Legality, or of Factories actory charging Act, the latter complain against the actual offender, and if he does so, the actual offender is given notice and brought before the Court and the trial proceeds as against both persons complained against The carriage of proceedings is with the original complainant on whom the onus lies of proving that the offence has been committed Both parties complained against

however, is now he is entitled to eld The actual evidence, but difference in hat the actual of an accused, stage, besides nus of positive and in all pro certain facts of own which has gboat retained at this stage er if he gives in support of The Magis- trate has no power to convict the actual offender or discharge the occupier or manager until the proof envisaged

FAMILY ARRANGEMENT.

carrying very hot water or injurious substance—Liability of manager

The rules framed under the Factories Act do not require that a place like a pit containing hot water for silting wood in a rice factory, which is used for the purposes of the factory should be fenced in such a manner as to be completely unapproachable. It is fenced in such a way that nobody may go and fall into the pit by accident.

Held that the manager was not liable to be convicted for not observing Rule 72 (1) of the Rules framed under the Factories Act and for failing to fence the pit because firstly the pit was fenced and secondly it was not a pit which ordinarily contained any hot or injurious substance. (*James, J*) JADU RAM v EMPEROR

5 B R 329 = 180 I C 68 = 11 R P 441 = 40 Cr L J 316 = 1939 P W N 183 = 20 P L T 95 = AIR 1939 Pat 46

FAMILY ARRANGEMENT—Bifurcating character

A family arrangement is governed by a special equity peculiar to itself and cannot be set aside upon the ground that it was accepted under a misconception of facts or an erroneous view of one's rights or that it had given one party more than he was legally entitled to and would have received it if he had taken the judgment of the Court upon it. (*Nawal Kishore C J* and *Sukhdonarain, JJ*) KUSHALSINGH v UTTAMSINGH 1939 M L R 229 (Civ)

Registration—Necessity—S 53 A, of the T P Act, if applies. See T P ACT S 53 A, APPLICABILITY 1939 A W

FAMILY SETTLEMENT—Object

Requirements

A family settlement is intended to put an end to a dispute and its validity does not depend on how far one of the parties has been agitated in a court all proceedings if it concerned need not be in

1939 A W

FEDERAL COURT RULES O 9 I

effect—Appeal to Federal Court—Printing charges—Time for payment fixed in O 45, R 7 (1)—Power of Court to extend. See C, P CODE (AS AMENDED IN 1920) O 45, R 7 (1) AS APPLIED TO FEDERAL COURT APPEALS 1939 P W N 807 (F B)

O 9, R 2—Date of signing of the decree—meaning of

(*Harris, C J* and *Fazl Ali, J*) Quere—Where the decree is appearing in mean something appearing in O to Federal Court

(*Agarwala, JJ*) LACHMESHWAR PRASAD SIKHL v GIRIHARI LAL 1939 P W N 807 = 20 P L T 905 = AIR 1939 Pat 667 (F B)

FOREST ACT XVI OF 1927) S 52—Removal of timber seized under—Conviction for theft—Finding as to ownership—Need for

Under S 52 of the Forest Act the forest produce alone can be seized in relation to which a forest offence is believed to have been committed and no forest offence can be said to have been committed in relation

GENERAL CLAUSES ACT (1897), S 3 (52).

to any forest produce unless it is definitely established that that produce belonged to Government. Consequently, to sustain a conviction for theft under S 379, I P Code for the removal of timber seized under S 52 of the Forest Act, it is essential for the Court to come to the conclusion that the timber belonged to Government.

GULABU v EMPEROR
7-12 R L 222 = 41 P L R 423 = AIR 1939 Lah 469

rees not belonging to

Government under with the disposal of trees not belonging to Government will be clearly ultra vires (*Din Mohammad J*) GULABU v EMPEROR 184 I C 427 = 12 R L 222 = 41 P L R 423 = AIR 1939 Lah 469

FRAUD—Fraud on power—Meaning of fraud therein

The term fraud used in connection with frauds on a power does not necessarily denote any conduct on the part of the appointer amounting to fraud in the ordinarily understood meaning of the word. It only means that the power has been exercised for a purpose, or with an intention beyond the scope of or not justified by the instrument creating the power. (*Th mas J*) ALI FAZA KHAN v NAWAZISH ALI KHAN 1938 O A 845 = 1938 O W N 1157

Legal and moral fraud—Distinction

Fraud is not defined in any enactment but it has a very well understood meaning. It is always a question of fact and a matter of inference from evidence led in the case, and because the evidence which yields the inference of fraud cannot be specified beforehand it is impossible to define legal fraud. There is no distinction between legal fraud and moral fraud. To make a fraud to be proved (*Ram Lal, J*)

ILL (1939) Lah 433 = 41 P L R 843 = AIR 1939 Lah 439

Proof—Imputation of fraud to rich person in good position—Strict proof—Necessity—Burden of proof. See INSURANCE—LIFE ASSURANCE POLICY 41 P W N 250

48 L W 946

FRAUDULENT TRANSFER

See (1) PRESIDENCY TOWNS INSOLVENCY ACT.

(2) PROVINCIAL INSOLVENCY ACT

(3) TRANSFER OF PROPERTY ACT

Essentials—Hindu family—Partition award—Gift of properties to unmarried daughters—Provision made for payment of debts—Right of creditors to impeach—Absence of fraudulent intent—Effect. See HINDU LAW—FAMILY SETTLEMENT

17 Mys L J 116

GENERAL CLAUSES ACT (X OF 1897) S 3(52)

Mark—If includes expression 'Sahi' written at the foot of a document

The writing of a word or expression as 'Sahi' at the foot of a document cannot be considered to be a 'mark' made by that person under S 3(52) of the General Clauses Act in the absence of proof that in fact the particular person was unable to write his own name. (*Hamilton J*) RAGHUBIR SINGH v SUKHAJ KUAR

14 Luck 393 = 179 I C 596 = 11 R O 190 = 1939 O L R 57 = 1939 O W N 1 =

GENERAL CLAUSES ACT (1897), S 5 (3)

1939 A.W.R. (C.C.) 7=1939 O.A. 128=
A.I.R. 1939 Oudh 96.

—S. 5 (3)—Scope of—If can be invoked to construe the word 'date' in K 54 (3) (Allahabad) of O 21, C. P. Code. See C. P. CODE, O 21, R 51 (3) Allahabad.

1939 A.L.J. 7=A.I.R. 1939 All 154
affected

According to S. 6 of the General Clauses Act the rights that have become secured under the old Act cannot be the subject of fresh re-examination in the light of subsequent legislation (*Mekla, J.M.*) 1841 HUSAN v. GONDAR. 1939 A.W.R. (B.R.) 41=

1939 A.L.J. (Supp.) 49=1939 R.D. 303.

GIFT. See also (1) HINDU LAW—GIFT.

(2) MAHOMEDAN LAW—GIFT.

—Construction—Giving of exclusive control to donee, and donor to be maintained—Right, if any, left in the donor

Where a father-in-law by a gives exclusive control to his daughter's properties, with the only reservation maintained during his lifetime and to ensure which, his name is left in the papers the transfer is a gift in the full sense of the word. As such, the donor has no property left in him over which he could create any interest in favour of any one subsequently (*Mekla, J.M.*) BALDEO PANDF v. MT. MUNESWAR

1939 A.W.R. (B.R.) 45=1939 R.D. 175

—Delivery of possession—Absence of—Effect—No privity of interest between the donor and donee

Where a donee does not enjoy that which exists between persons like a grand-son or a father and a minor son, the donor makes a gift but does not pass possession of the property to the donee, then the interest in favour of the donor begins to run against the donee (*Marish S.M.* and *Mekla J.M.*) SALIK RAM SINGH v. JANKI TEWARI. 1939 R.D. 312=1939 A.W.R. (B.R.) 130=

1939 A.L.J. (Supp.) 81

—Validity—Delivery of possession deferred till happening of certain event

The mere fact that the transferor when conferring an absolute estate directed that the property shall not be made over to the donee till after the happening of a certain event could not affect the validity of gift, for such direction is either inoperative or even if operative could not make the gift itself invalid (*Nawal Kishore, C.J.* and *Sukhdeo Narain, J.*) BIRCHHAND v. DEEPA. 1939 M.L.R. 92 (Civ.)

—Validity—Gift of lease contrary to conditions laid down in lease—Lessor declaring gift to be invalid—Gift not legally cancelled—Effect

A lease of certain Government lands contained a clause that the lessee had no authority to sub-let, sell, donate or mortgage or otherwise dispose of or deal with the lease interest without the consent of the Government and that if he did so, the same would be void. The lessee desiring to make a gift of his properties to his sons and wishing to include the Government lease therein wrote to the Government for permission, but without waiting for the permission to be obtained, executed gift deeds in favour of sons individually and included these in the Government lease among other properties. The Government asked to be furnished with a copy of the proposed gift deeds and the same were granted subject to certain conditions. The Government ultimately failed to obtain a copy of the Government cancellation deeds to be pre- copy to the Government same and wrote to the lessee that the gift deeds pre-

GOVT. OF INDIA ACT (1935), S. 45-A,

ously executed were invalid. The gift deeds were however never in fact cancelled.

H.L.D., that the Government having avoided the attempted gifts, those donations were void and did not operate as a valid assignment of the tenant's interest in the lease. Therefore no property passed to the donees under the deeds though they may not have been legally cancelled. (*Lord Porter*) JAYAWARDENE v. JAYAWARDENE. 182 I.C. 770=12 E.P.C. 18=60 L.W. 87=

41 P.L.R. 717=A.I.R. 1939 P.C. 138.

GOVERNMENT OF INDIA ACT (1935)—Interpretation of—Principles—Duty of Court.

The constitution is not to be construed in any narrow or pedantic sense, and the Court will have regard to the fact that the subject matter of the interpretation is a constitution—a mechanism under which laws are to be made and not a mere Act which declares what the Law shall be (*Gwyer, C.J.*, *Sulaiman and Jafakar, J.J.*)

In the matter of C. P. and BERAR SALES OF MOTOR

C 1=

144=

5 B.R. 405 (2)=43 G.W.N. (F.C.R.) 1=

1939 P.W.N. 453=49 L.W. 36=1939 M.W.N. 25=

A.I.R. 1939 F.C. 1=1939 M.L.J. (Supp.) 1.

—Interpretation of—White paper and Report of Joint Select Committee—Prior Legislative Practice—Reference to—If justified

Gwyer, C.J. and *Jafakar, J.* (*Sulaiman, J.* doubting) The proposals for Indian Constitutional Reforms have been the subject of a long and elaborate discussion.

Gwyer, C.J. and *Sulaiman, J.* (*Jafakar, J.*, doubting) The Legislative practice in India preceding the constitution Act may be looked into, for Parliament must surely be presumed to have that in mind, and unless the context otherwise clearly requires not to have conferred a legislative power in a sense not understood by those to whom the Act was to apply (*Gwyer, C.J.*, *Sulaiman and Jafakar, J.J.*) In the matter of C. P. and BERAR SALES OF MOTOR SPIRIT AND LUPRICANTS TAXATION ACT, 1938. 1939 F.C.R. 18=

180 I.C. 161=11 E.P.C. 1=2 F.L.J. 6=

20 P.L.T. 197=1939 O.L.R. 144=5 B.R. 405 (2)=

43 G.W.N. (F.C.R.) 1=1939 P.W.N. 453=

49 L.W. 36=1939 M.W.N. 25=

A.I.R. 1939 (F.C.) 1= (1939) M.L.J. (Supp.) 1.

—S 32—Tort of Government servant employed in Government Hospital—Liability of Secretary of State for damages. See TORT—DAMAGES 49 L.W. 679=

(1939) 1 M.L.J. 784.

—S 45 A—Devolution rules—Scope and effect

Per *Lord Williams, J.*—S 45 A of the Government of India Act does not declare that the devolution rules made under it are part of the Act. If any of them are inconsistent with the sections, the latter must prevail.

Per *Mitter J.*—As the devolution rules framed under S. 45-A of the Government of India Act have to be made under the procedure prescribed in S. 129-A, they become part of the statute. If they and the statute are in conflict, the governing intention of the Legislature

be that expressed in the Act under it, and the Act under the ground of *Lord Williams Bartley* (J.J.) NARASINGHDAS

I.L.R. (1939) 2 Cal 93=183 I.C. 113

GOVT. OF INDIA ACT (1935) S 49

12 R C 129 = 2 F L J (P II) 71 = 69 C L J 458 =
43 C W N 613 = A I R 1939 Cal 435 (S B)
—S 49—Ministers—If subordinate officers to
Governor

The ministers of a province are not subordinate
officers to be appointed by the Governor. —S 49—

12 R C 163 = 2 F L J (Part II) 55 =
40 C r L J 782 = 69 C L J 539 = 43 C W N, 950 =
A I R 1939 Cal 529 (S B)

—S 49—Scope and effect of—Madras District Municipalities Act—
to issue—Governor and Provincial
rentation See GOVERNMENT OF

50 L W 538
—Ss 100 and 107—Scope and effect of—Madras
Agriculturists' Relief Act—If ultra vires the powers of
the Provincial Legislature as repugnant to Negotiable
Instruments Act Usurious Loans Act or the Hindu Law
of debts—Assent of Governor General—Effect of

Though in one aspect and for one purpose a subject
may be within the powers of the Federal Parliament, in
another aspect and for another purpose it may fall within
the powers of a Provincial Legislature. The Madras
Agriculturists' Relief Act is one which relates to *agri-*
culture a subject reserved for the Provincial Legis-
lature, item 20 of List II of Schedule VII of the
Government India Act. The Act relates to money
lending to agriculturists and 'money lending' also is a
subject reserved for Provincial Legislature, item 27 of
List II of Sch VII. The only effect of the Act so far
as Negotiable Instruments are concerned is to reduce
liability where the maker or endorser is an agriculturist.
The Act being in substance within the powers of the
Madras Legislature, the fact that in particular cases it
may operate to reduce liability on contracts evidenced by
negotiable instruments cannot affect its validity. So too
its affecting discretion given to Courts by the Usurious
Loans Act cannot affect its validity. Even if the matters
dealt with under the Act do not come within the exclu-

must prevail in the province unless and until the Federal
Legislature thinks fit to legislate in respect of the same
matter. The Provincial Legislature has power to
legislate with regard to 'contract' and no exception is

GOVT. OF INDIA ACT (1935), S 106

1939 M W N 192 (2) = 49 L W 257 =
A I R 1939 Mad 361 = (1939) 1 M L J 272 (F B)

—S 100 (1) and (3)—Construction—Scope—
Schedule VII List I, Item 45 and List II, Item 48—
Scope of—Respective powers of the centre and of the
taxes—C P and Berar Sales of
lubricants Taxation Act of 1938—If
retail sales of motor spirits and
lubricants—If excise duty or tax on sale of goods

If a tax is covered by the Federal List (List I of
Sch VII to the Government of India Act of 1935) and
not covered by the Provincial List (List II of the said

if a tax falls within both the Lists then such a tax will
be *ultra vires* the Provincial Legislature by reason of
the non obstante clause in S 100 (1) of the Government
of India Act. But it is a fundamental assumption that
the legislative power of the centre and the Provinces
could not have been intended to be in conflict with
one another and the Court must therefore read them
together and interpret or modify the language in which
one is expressed by the language of the other and arrive
at a reasonable and practical construction of the lan-
guage of the section so as to reconcile the respective
powers they contain and give effect to all of them. It
is only if such a reconciliation should prove impossible and
only then will the non obstante clause in S 100 (1)
operate and the Federal power prevail for the clause
ought to be regarded as a last resort. Sec 3 of the
C P and Berar Sales of Motor Spirit and Lubricants
Taxation Act of 1938 and all the provisions thereof
levying a tax on the retail sales of motor spirit and
lubricants at the rate of five per cent on the value of
such sales is no *ultra vires* the Legislature of the
Central Provinces and Berar. It falls under Item 48 of
List II in Sch VII of the Act as a tax on the 'sale of
Goods' and is not covered by Item 45 in List I of Sch
VII as a 'duty of excise'. (*Gumper C J Sulaman and
Jayshor JJ*) In the matter of C P AND BERAR

—Ss 106 and 80-A (4)—Jurisdiction of High
Court—Curtailement of—Powers of Provincial Legi-
slature

The jurisdiction powers and authority of the High

—S 106 (2)—Construction—Matter concerning
the revenue—Meaning of—Stamp duty payable in
document—Question as to—Jurisdiction of High Court
to entertain suit.

at the Hindu Law as to debts (*Leach C J, Was-
worth and Krishnarwami Ayyangar JJ*) NAGA-
RATNAM v SESHAYYA (THE MADRAS AGRICUL-
TURISTS ACT *In re*) I L R (1939) Mad 151 =
180 I C 994 = 11 R M 760 = 2 F L J 39 =

GOVT. OF INDIA ACT (1985), S. 204.

The expression "the revenue" in S. 106(2) of the Government of India Act does apply to the stamp duty payable under the Indian Stamp Act and such stamp duty does fall within the terms of the section. Where the contention is that the stamp authorities are not entitled to charge any particular stamp duty, it must be a "Matter concerning the revenue" within the meaning of S. 106 (2), and any act ordered to be done in the collection of the revenue would likewise be a matter concerning the revenue. An act done by the revenue authorities for the purpose of collecting the revenue

jurisdiction to entertain a suit in such a matter by reason of the bar imposed by S. 106 (2), and the public have no remedy against what may turn out to be a wrong and arbitrary decision of the stamp authorities with regard to the payment of duty chargeable in respect of any particular document, save and except the somewhat doubtful remedy provided by S. 56 of the Stamp Act.

CEMENT CO.,

41 Bom L R 297 - A I R 1939 Bom 215

—S. 107—Bihar Act IX of 1938, S 15—If repugnant to S 38, C. P. Code, and void as such
S. 15 of Bihar Act IX of 1938 is not void under

the C. P. Code to some extent applicable to rent suits and provide new procedure for the trial of rent suits (*Khaja Mohamed Noor and Chatterji JJ*) RAZAUR RAHMAN v. UDDI SINGH 18 Pat. 694 = 6 B R 106 = 1939 P W N 530 = 20 Pat L T 492 =

—S 107--Bihar Money-Lenders Act (1939) if repugnant to existing Indian law and so void See BIHAR MONEY-LENDERS ACT (VII OF 1939) 20 Pat LT 473-AIR 1939

—S 107—Repugnancy of provincial law
Indian law—Principles of construction

Per Sulaiman, J.—When the question is provincial legislation is repugnant to an existing Indian law, the onus of showing its repugnancy and the extent to which it is repugnant should be on the party attacking its validity. There ought to be a presumption in favour of its validity, and every effort should be made to reconcile them and construe both so as to avoid their

offending provisions are so interwoven into the scheme of the Act that they are not severable, then the whole Act is invalid. (*Gwyer, C.J. Sulaiman and Vuradachariar, JJ.*) **SHYAMAKANT LAL v. RAMBAJAN SINGH.**

(1939) F.C.R. 193=12 F.C. 1=2 F.L.J. 183=
43 C.W.N. (F.C.R.) 193=182 I.C. 161=
1939 O.L.R. 399=5 B.R. 766=1939 M.W.N. 674=
1939 P.W.N. 533=20 Pat.L.T. 473=
A.I.R. 1939 F.C. 74=(1939) 2 M.L.J. (Supp.) 45.

—S 107—*Refugeancy—Test*

If the dominant law has expressly or impliedly evinced its intention to govern the whole field,¹⁴ then a subordinate and therefore content in a given intention must

—S 107 (1)—“Existing Indian Law”—Bihar Money Lenders Act (III of 1938)—If repugnant to existing law, void. See BIHAR MONEY-LENDERS ACT, 1938 P.W.N. 913 (F.B.).

(1)~*Misdescription of respondent*—If
trial of appeal

No doubt under S 179(1) of the Government of India Act, an appeal should be lodged against the Secretary of State and not against the Secretary of State for India in Council. But the mere words "for India in Council" does not mean of the appeal as at the worst it is the opinion of the res

MUNDER KHAN

41 P L R 134=
A I R 1939 Lah. 298.

—S 179 (2)—*Misdescription—Amendment*

Where in a suit against the Secretary of State, the latter is wrongly described as "Secretary of State for India in Council" this is a mere misdescription which can be amended at any time by omitting the words "for India in Council". (Dalsip Singh J.) AMAR KAUR v. SECRETARY OF STATE AIR 1939 Lah 583

—S 204—'Legal right'—Meaning of -Suit for declaration that S 106(c) of Cantonments Act is ultra

S 106(c) of the Cantonments Act (II of 1924) was ^{at}
ultra vires the then Indian Legislature, that all fines ^{was}
imposed and realised by Criminal Courts for offences ^{and}
committed within the cantonment areas should be ^{be}
credited to the provincial revenues and that the plaintiffs ^{be}
were entitled to recover and adjust all such sums ^{sums}

vires in the former, while *intra vires* in the latter. A law which is *ultra vires* in part only may thereby become *ultra vires* in whole if the object of the Act cannot at all be attained by excluding the bad part. If the

capable of being enforced by the power of a State, but not necessarily in a Court of law. It is a right of a party recognised and protected by a rule of law, the violation of which would be a legal wrong done to

GOVT OF INDIA ACT (1935), S 205.

interest and respect for which is a legal duty, even though no action may actually lie. The mere fact that under the previous Act the Provincial Governments were subordinate administrations under the control of the Central Government and could only have made a representation to the Governor General in Council or the Secretary of State, would not be sufficient in itself for holding that the former could not possibly possess any legal rights at all against the Central Government even in respect of rights conferred upon them by the provisions of the Act or the rules made thereunder. If a legal right existed under the old Act, S 204 of the new Act would not be inapplicable merely because the right related to an earlier period. (*Gwyer, C J, Sulaiman and Varadachariar JJ*) THE UNITED PROVINCES v THE GOVERNOR GENERAL IN COUNCIL 1939 FCR 124 = 11 R F C 44 (2) = 50 L W 209 = 1939 P W N 555 1939 M W N 750 = 180 I C 863 = 5 B R 554 = 40 C R L J 403 = 1939 O L R 246 = 2 Fed L J 123 = A I R 1939 F C 58 = (1939) 2 M L J (Supp) 1

—S 205—First order—Appeal to High Court against order dismissing application under Ss 16 and 17 of Bihar Money Lenders Act (III of 1938)—Dismissal—Appeal to Federal Court—If lies

Per *Gwyer C J and Varadachariar J*—Ss 16 and 17 taken together secure a substantial benefit to the judgment debtor namely that he shall not by reason of any forced sale in a Court auction be deprived of his property for less than its fair value. The dismissal of an appeal by the High Court against an order dismissing application under Ss 16 and 17 Bihar Money Lenders Act (III of 1938) has the effect of finally denying to the appellant this advantage and the order of the High Court must to this extent be treated as determining a

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the High Court must be treated as a final order for the purpose of S 205, Constitution Act and an appeal to Federal Court therefore lies.

Per *Sulaiman J*—The word 'judgment' does not include every order. Similar decree must involve a determination of the rights of the parties. The order of the High Court dismissing the appeal from the lower Court, order refusing to fix the valuation or to specify a portion of the mortgaged property in the proclamation of sale is neither a judgment decree nor a final order within the meaning of S 205 (1) of the Act. No appeal therefore lies to the Federal Court. (*Gwyer, C J Sulaiman and Varadachariar JJ*) SHYAMAKANT LAL v RAMBHAJAN SINGH (1939) FCR 193 = 12 R F C 1 = 2 F L J 183 = 182 I C 161 =

5 B R

—S 205—Refusal of certificate by High Court—Grant of special leave—Jurisdiction of Federal Court

Where the High Court has refused to grant a certificate under S 205 (1) of the Government of India Act the Federal Court has no inherent jurisdiction to grant special leave to appeal. The Federal Court being a statutory Court its jurisdiction must be collected from the terms of the statute which created it and there is nothing in the statute which gives the Court power to entertain an application for special leave to appeal. (*Gwyer C J Sulaiman and Jayakar JJ*) LAKHPAT RAM v. BEHARI LAL MISSIR 1939 FCR 121 =

GOVT OF INDIA ACT (1935) S 208

180 I C 550 = 11 R F C 44 (1) = 5 B R 529 = 1939 M W N 359 = 1939 O L R 210 = 49 L W 570 = 20 Pat L T 263 = 1939 P W N 203 = 2 Fed L J 121 = A I R 1939 F C 42.

—S 205 (1)—Construction—'Judgment, decree or final order'—Meaning—Federal Court—Jurisdiction in criminal matters

Gwyer, C J—The Federal Court has jurisdiction in civil as well as in criminal matters. The words 'judgment, decree or final order' ought to receive no narrow interpretation.

Sulaiman, J—It may be assumed that the words 'judgment or final order' in S 205 (1) of the Government of India Act apply to criminal cases as well but an order of the High Court directing the re-hearing of a criminal appeal by the Sessions Court is not 'judgment' within the meaning of the section.

Varadachariar J—S 205 of the Government of India Act is not in terms limited to civil cases and the word 'judgment' is comprehensive enough to include a judgment pronounced in a criminal case. (*Gwyer, C J, Sulaiman and Varadachariar, JJ*) HOKI RAM SINGH v EMPEROR (1939) FCR 159 = 5 B R 685 = 11 R F C 60 = 1939 M W N 497 =

40 C R L J 468 = 1939 O L R 366 = 1939 P W N 429 = 50 L W 95 = 43 C W N (FCR) 50 = 20 P L T 539 = 41 P L R 680 181 I C 317 = 2 Fed L J 153 = A I R 1939 F C 43 = (1939) 2 M L J (Supp) 23.

—S 205 (1)—Construction—Substantial point of law as to the interpretation of the Act or of any order in council, etc.—Meaning of—Order of Foreign and Political Department No 341 B dated 14.1.1937—Construction of—Decision on—Certificate—If can be granted

The notification or order of the Foreign Political Department No 341 B order made It was an the Crown

representative but an order made by the Governor-General in Council under the Foreign Jurisdiction Act and Indian (Foreign Jurisdiction) Order in Council 1902. There was no power under the Government of India Act to make any orders in Council relating to Foreign Jurisdiction until 1.4.1937. The construction of the said order dated 14.1.1937 cannot be said to be a substantial point of law as to the interpretation of the Act or of any order in Council made under the Act within the meaning of S 205 (1) of the Act, so as to justify the grant of a certificate by the High Court under S 205 (1) though the case as such might involve a difficult and substantial point of law in general. (*Hirrie, C J and Agarwala J*) HARMOHAN PATNAIK v EMPEROR 1939 P W N 858

—S 205 (1)—Judgment decree or final order—Opinion given by High Court on reference under S 432 Cr P Code

An opinion given by the High Court on a reference under S 432 Cr P Code, is not a judgment or decree or final order of that Court within the meaning of S 205 (1) of the Government of India Act. (*Derbyshire C J, Nazim Ali and Rau JJ*) EMPEROR v HEMEN

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tions

Unless special circumstances are shown which would justify the grant of leave to appeal to the Privy Council the Federal Court will not ordinarily grant such leave

GOVT. OF INDIA ACT (1935), S. 209

(Gwyer, C.J., Sulaiman and Varadachariar, JJ.)
HOKI RAM SINGH v. EMPEROR.

181 IC 647 = 11 R F C 75 = 1939 O L R. 416 (1) =
40 Cr L J. 599 = 2 F L J 206 = 1939 P W N 522 =
1939 M W N. 616 = 5 B R 771.

—S 209 (1)—Remission of case to High Court—
Powers of Federal Court.

The Federal Court in the exercise of its appellate jurisdiction can remit under Ss 205 and 209 (1) a case to the High Court with a declaration that there shall be substituted for the judgment, decree or order of the High Court a judgment, decree or order which recognizes the state of the law which comes into the appeal to Federal Court is pending, since the law as it existed at the time the Court had given of the case. (Gwyer, C.J., Sulaiman and Varadachariar, JJ.)

SHYAMAKANT LAL v. RAMBHAJAN SINGH (1939) F C R 193 = 12 R F C 1 = 2 F L J 183 = 182 IC 161 = 43 C W N (F C R) 193 = 1939 O L R 399 = 5 B R. 756 = 1939 M W N 674 = 1939 P W N 533 = 20 Pat L T. 473 = A I R 1939 F C 74 = (1939) 2 M L J (Supp) 45.

—S. 224 (1) and (2)—Construction and scope—Powers of High Court existing before Act—If taken away or affected.

Sub-S (2) of S. 224 of the Government of India Act cannot have been intended to curtail any of the powers possessed by the High Courts before the Act of 1935 was passed. In fact S. 223 preserves those powers. All that S. 224 (2) means is that the Courts cannot so interpret sub-S (1) to usurp the powers which they did S. 224 deals with the administrative High Court and it does not affect the powers upon the High Courts by the Letters Patent and the Charter Act, powers co-extensive with those of the Court of the King's Bench in England, including the power to issue writs of *certiorari* in respect of proceedings of Subordinate Courts tribunals or officers acting judicially. (Mackinnon and Lokur, JJ.) MULH SICKA & CO v. MUNICIPAL COMMISSIONER OF BOMBAY 41 Bom L R 981 = A I R 1939 Bom 471.

—S. 224 (2)—Scope—Order of Village Headman under S 10 of Regulation XI of 1916—Appeal—Revision—Competency

GOVT. OF INDIA ACT (1935), S. 270.

Section 270 is very wide in its terms and prohibits the institution of proceedings in respect of the acts described therein against all servants of the Crown, employed in connexion with the affairs of the province, whether they are 'gazetted officers' or not (*Tek Chand and Blacker, JJ.*) ARJAN SINGH v. EMPEROR.

181 IC 680 = A I R 1939 Lah. 479.
—S. 270—Charges against servants of Crown—Necessity for Governor's consent.

Where the charges against certain servants of the Crown not only stated that the alleged criminal acts were done by them while they were engaged in the execution

of their duties, that the consent prescribed in S. 270 was required for institution of proceedings against them (*Tek Chand and Blacker*)

—S. 270—C

tion.
Where the consent is stated to have been granted by the Governor of a Province and there is no indication that in doing so the Governor was acting with his Ministers, it must be presumed that he granted it in his discretion. (*Tek Chand and Blacker, JJ.*) ARJAN SINGH v. EMPEROR.

181 IC 680 =
—Ss 270 and 59 (2)—Consent of Governor signed by Home Secretary—Validity

sion of the consent by him is valid (*Tek Chand and Blacker, JJ.*) ARJAN SINGH v. EMPEROR.

181 IC 680 = A I R 1939 Lah. 479.

—S. 270 (1)—Consent of Governor—Necessity for—Test to decide—Allegations in charge or suit—Facts put forward by accused or defendant in case—Relevancy

Under S. 270 of the Government of India Act, the consent of Governor is a condition precedent to the institution of the proceedings, and the necessity for such consent cannot be made to depend upon the case

40 Cr L J. 468 = 1939 O L R 366 = 1939 P W N 429 = 50 L W. 95 = 43 C W N (F C R) 50 = 20 P L T 539 = 41 P L R 680 = 181 IC 317 = 1939 M W N 497 = 2 Fed L J. 153 = A I R 1939 F C 43 = (1933) 2 M L J (Supp) 23.

—S. 270 (1)—Construction—Protection afforded

—S. 270 (1)—Construction—Protection afforded

under the Sea Customs Act—Jurisdiction of High Court.
Under S. 226 (1) of the Government of India Act, 1935 the High Court has no original jurisdiction to entertain a suit challenging the legality of an order for confiscation of smuggled goods passed under the Sea Customs Act as the seizure and confiscation of the goods is an act ordered or done in the collection of revenue.

GOVT OF INDIA ACT (1935), S 270.

ress in a Court of law and any restrictions on such a remedy imposed in the interest of the public servant should not be lightly extended so as to unduly restrict the remedy of the citizen (*Gwyer, C J, Sulaiman and Varadachariar, JJ*)

HORI RAM SINGH v EMPEROR
(1939) F O R 159 = 5 B R 685 = 11 R F C 60 =
40 C r L J 468 = 1939 O L R 366 =
1939 P W N 429 = 50 L W 95 =
43 C W N (F O R) 50 = 20 P L T 539 =
41 P L R 680 = 1939 M W N 497 = 181 I C 317 =
2 F e d L J 153 = A I R 1939 F C 43 =
(1939) 2 M L J (Supp) 23

—S 270 (1)—Scope—Any act done or purporting to be done in the execution of his duty—Charge under S 409 and 477 A, I P Code, against public servant—Consent of Governor—Necessity

Where a Sub Assistant Surgeon in the Provincial Subordinate Medical Service in charge of a rural hospital is charged with criminal breach of trust under S 409 I P Code in respect of certain medicines entrusted to him and under S 477 A I P Code for having wilfully and with intent to defraud, omitted to record entries in the stock book of medicines, it cannot be said that in respect of the charge under S 409, I P Code the acts in respect of which he is intended to be prosecuted can be regarded as acts done or purported to be done in execution of his duty. But in respect of the charge under S 477 A I P Code the official capacity involved in the very act complained of as amounting to a crime the gravamen of the charge

stances (*Gwyer, C J, Sulaiman and Varadachariar, JJ*)

HORI RAM SINGH v EMPEROR
1939 F O R 159 = 5 B R 685 = 11 R F C 60 =
40 C r L J 468 = 1939 O L R 366 =
1939 P W N 429 = 50 L W 95 =

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41 P L R 68
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cannot be cured under S 537 Cr P Code even when no prejudice has been shown to have been caused. Where therefore the initiation of proceedings is illegal for want of consent but those proceedings proceed to another Court which begins subsequent production of consent before the commencement of the trial to validate what was invalid at its inception and *Blacker, JJ*)

ARJAN SINGH
181 I C 680—A

GOVT OF INDIA ACT (1935), S 306

—S 297 (1) (b)—Construction and scope—"Locality"—If confined to localities in India—Products of foreign countries—If covered—Powers of taxation under section

Sulaiman, J—An intention to discriminate is not essential to invalidate a legislation under S 297 (1) and (2) but it is sufficient if the provisions of the enactment result in discrimination

Quaere—Whether the word 'locality' in S 297 (1) (b) should not be confined to localities in India having regard to the marginal note to the section, and whether the section deals with products of foreign countries

Jayakar, J *Quaere*—Whether S 297 (1) (b) does not posit a power to levy a tax on two sets of goods (*Gwyer, C J, Sulaiman and Jayakar, JJ*) In the matter of C P AND BERAR SALES OF MOTOR SPIRIT AND LUBRICANTS TAXATION ACT 1938

(1939) F O R 18 = 180 I C 161 = 11 R F C 1 =
2 F L J 6 = 20 P L T 197 = 1939 O L R 144 =
5 B R 405 (2) = 43 C W N (F O R) 1 =
1939 P W N 453 = 49 L W 36 = 1939 M W N 25 =
A I R 1939 F C 1 = 1939 M L J (Supp) 1

—S 306—Scope—Order of Provincial Government under S 36 Madras District Municipalities Act, and issued in name of Governor under S 59, Government of India Act, reversing prior order—Application for writ of certiorari—Maintainability—Government of India Act S 49—Scope and effect

A temple tank vested in a Municipal Council was in

hearing the Municipal Council upheld the original order of the Municipal Council cancelling the Government's previous order. The order of the Government was issued in the name of the Governor of the Province as required by S 59 of the Government of India Act. The

to issue a writ of
quash its order
council and con
not to reverse its

redirection to issue
which was an execu
the name of the
e Government of

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Government had no power to cancel or vary its own

GOVT. OF INDIA ACT (1935), S. 317.

—S 317 and Sch 9 and Hindu Women's Right to Property Act (1937)—Scope and object of S. 317 and Sch. 9—Hindu Women's Right to Property Act is a validly passed Act

in:
vi
A:
C:
along continued to be the law of British India. It appears that the provisions made in S. 317 and Sch. 9 is intended to continue the validity of the functions of the Indian Legislature. So the Hindu Women's Right to Property Act is a validly passed Act. (*Bennet and Verma, J.J.*) JANAK DULAKI v SRI GOPAL.

1939 A.W.R. (H.C.) 655 = 1939 A.L.J. 875 = 2 F.L.J. 143 = A.I.R. 1939 All 706
—Sch VII List I Item 45 and List II, Item 48—"Excise"—"Taxes on the sale of goods"—Interpretation of.

The term "excise" may have a wider meaning so as to include all duties levied on the consumption of excisable commodity at any stage from production to sale, but having regard to the context in which the expression is used and the scheme of the Government of India Act, and to avoid conflict with Item 48 in List II of Schedule VII the expression "Duties of excise" as used in Item 45 of List I of Schedule VII must be construed as a power to impose duties of excise upon the manufacturer or producer of the excisable articles, or at least at the stage of, or in connection with manufacture or production and that it extends no further between the first sale and the not intimately connected with producer while the former is the wider meaning, then the amount to excise duty and Provinces to impose under license fees and certain turn over taxes which will be merely illusory and that could not have been the intention of Parliament in using the words "taxes on the sale of goods" in Item 48 in List II of Sch. VII to the Act (*Gwyer, C.J., Sulaiman and Jayakar, J.J.*) In the matter of C. P. AND BEARER SALES OF MOTOR SPIRIT AND LUBRICANTS TAXATION ACT 1938

1939 F.C.E. 18 = 180 I.C. 161 = 11 R.F.C. 1 = 2 F.L.J. 6 = 20 P.L.T. 197 = 1939 O.L.R. 144 = 5 B.R. 405 (2) = 43 C.W.N. (F.C.R.) 1 = 1939 P.W.N. 453 = 49 L.W. 38 = 1939 M.W.N. 25 = A.I.R. 1939 F.C. 1 = 1939 M.L.J. (Supp.) 1

—Sch VII List III, Entry No. 4—"Civil Procedure"—If includes jurisdiction and powers of Courts

"Civil Procedure" in the Concurrent in Sch VII to the Government of India held to exclude matters relating to powers of Courts, since special provision these matters in the second entry in Legislative List. (*Mitter and Rau, J.J.*) G. I. STEWART v BROJENDRA KISHORE
184 I.C. 689 = 12 R.C. 271 = 69 C.L.J. 573 = 2 F.L.J. 112 = 43 C.W.N. 913 = A.I.R. 1939 Cal 623

in:
vi
A:
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Crown pleader. See C.L.J. 573 = 2 F.L.J. 112 = 43 C.W.N. 913 = A.I.R. 1939 Cal 623

GRANT—Alienability—Jagir to be enjoyed so long as any descendants of the grantee should survive—Prohibition against alienation by grantee—Provision for

Y. D. 1939—37

GRANT.

sumption on unauthorised transfer—Nature of interest created—Saleability in execution of money decree against grantee

When a jagir is created by the Crown which can be the grantee and which cannot be the interest of the grantee is a which is not assignable either by by voluntary alienation. The involuntary alienation is the power of voluntary transfer. The jagir cannot be sold in execution of a decree for money against the jagirdar, the only manner in which the decree-holder can realise for his own benefit the interest of the jagirdar in the property granted is by obtaining the appointment of a receiver of the rents and profits until his decree is satisfied or during the life time of the judgment-debtor which-ever might be the shorter period (*James and Rowland, J.J.*) UPENDRA SINGH v MEGHNATH SINGH.
18 Pat 370 = 6 B.R. 850 = 183 I.C. 56 = 12 R.P. 86 = A.I.R. 1939 Pat. 598.

—Construction—Inam Sanad—Grant of alienated village in inam together with all taxes and cesses present and future cesses, waters, trees, stones, mines etc.—Trees on land occupied by khots, dharekars and permanent trees prior to grant—Right to—Adverse possession by latter—Effect of

Where an inam sanad recites that an alienated village is granted to the grantee in inam together with all taxes and cesses the present and future cesses, waters, trees, stones, mines and buried treasures, but exclusive of the rights of the hakdars and ancient inamdars, the

tenants had, for a period of over thirty years been exercising the right of selling, cutting and removing the trees on their lands, constantly, openly, to the knowledge of the inamdars and without his permission and without protest from him, it must be held that the claim of the inamdars to the tree is barred by limitation and adverse possession (*Wadia and Srin, J.J.*) PUTI AJI VISHRAM v DAMODAR VISHNU 184 I.C. 437 = 12 R.B. 174 = 41 Bom L.R. 805 = A.I.R. 1939 Bom 405.

—Construction—Saranjam—Sanad—Grant of villages to grantee and his heirs from generation to generation—Provision for enjoyment in inam from generation to generation with rights of trees, water, stones, earth and minerals—If Saranjam—If confers

enjoyed in inam from generation to generation" and that the inam was to continue "so long as there shall remain in existence any male heir in the family of the grantee," cannot be held to be a *saranjam* grant such a

first instance was made Put such grants are *Saranjam* especially

which there is no thing in the sanad to indicate that a

GRANT

—*Crown grant—No term fixed—If an indication of permanency—Absence of heritability and transferability—Resumption—Right to—Time limit, if any*

to make it transferable nor is there any provision that

—*Personal inam by Government—Estate not known to personal law of grantee—Creation of—Validity—Successive life estates or limited interests—Power to create*

In the case of personal inams granted by the Government the latter may create heritable estates not known to ordinary Hindu or Mahomedan law and when once created the terms of the grant have got to be enforced by Courts. It is open to the Government to create successive life estates or limited interests and the prohibition as to alienation may be imposed by the Government either by virtue of an enactment or by a grant. To such case S 60, C P Code would apply and the property is not therefore liable to attachment and sale in ex-

SAHEBA

OR 249

—*Service grant—Desabandam main grant burdened with service—Alienability—Grant to Hindu family—Mortgage by father—Decree and sale in execution—Sons—If to end*

Lands granted by way of desabandam inam burdened with a service namely, keeping an irrigation tank in repair, are not alienable. An alienation of such inam lands is opposed to public policy and void. If a Hindu father executes a mortgage of such inam lands it cannot bind his sons, and a decree obtained on the basis of such a mortgage as well as an execution sale, being a nullity must be disregarded. (*Pindrang Row and Abdur Rah man, JJ*) LAKSHMADU v RAMUDU

50 L W 472—1939 M W N 918—
AIR 1939 Mad 867

—*Service grant—Ejectment suit—Plea of adverse possession—Onus of proof—Performance of service in the past—If plaintiff bound to prove—Non performance of service for over two years—Effect—Notice to quit—Necessity before suit*

Where a grant is found to be a service tenure a plaintiff suing in ejectment is not required to prove any thing else. He need not prove that he had actually

GROVE

CHANDU 5 B R 861—183 I O 80—12 R P 98—
1939 P W N 99—AIR 1939 Pat 362
—*Validity of—Tenure holder holding at variable rent—Grant of under tenure to another at fixed rent in*

rent of under tenure

liable to enhancement creates an under tenure at a rent fixed for perpetuity the fixity of rent in the under tenure cannot bind the grantor's landlord. A *patnidar* who claims directly under such a landlord and whose rights are superior to those of the grantor tenure holder cannot be bound by the grant either. When the *patnidar* puts up the tenure of the grantor tenure holder to sale in execution of a rent decree and purchases it himself, he gets the tenure as it is and not merely the right title and interest of the default judgment debtor and by no stretch of imagination can he be held to be the representative of the judgment debtor. It may be that he may not be able to avoid all the acts and transactions of the judgment debtor tenure holder, but he nevertheless gets the tenure and is entitled under the general law of the land to get the rent payable by the judgment debtor's under tenant enhanced subject to such limitations as the law provides. (*Wari and Ahija Moham mad Noor JJ*) CHANDRA MOHAN MAJHI v MID NAPORE ZAMINDARI CO LTD 20 Pat L T 185

GROVE See also LANDLORD AND TENANT—GROVE.

—*Grant for purposes of—Ownership in trees to be with landlord—No term as to re entry—Court sale—Landlord if entitled to re entry*

Where a particular land was granted for starting a grove on condition that the ownership in the trees was to remain in the landlord and that the grantee should have no power of sale or mortgage but there was no provision for re entry, and where after the death of the grantee, it is sold in execution of a decree against the son of the grantee and it is acquiesced in by him it amounts to an abandonment and the landlord can re enter. (*Hamilton, J*) MAHOMED SAADAT ALI KHAN v MAHOMED AMIR AHMAD 14 Luck 459—
11 R O 258—180 I C 765—1939 O A 321—
1939 O W N 333—1939 O L R 204—
AIR 1939 Oudh 158

—*Loss of character of grove—Inference—Circumstances*

Where the trees in a grove are all in a corner and the major portion from which they have disappeared is susceptible of being put to any other use the area has
sh S M and Mehta J
DIN BANIHU
39 A W R (B E) 284
incy tenant—Sale in
hat passes to auction

seedlings of a simple
sale of the trees of a

grantor from the time when the services
dered (*Manohar Lall, J*) HARISE

GROVE.

nature of the tenancy was changed by the planting of the grove and therefore the trees became transferable (*Bennet and Verma, JJ*) **LACHMAN SINGH v. MULWA** 181 I.C. 397 = 11 R.A. 562 =

1939 R.D. 110 = 1939 A.L.J. 209 =

1939 A.W.R. (H.C.) 119 = A.I.R. 1939 All. 224

—*Transfer of proprietary rights in sir land—Trees and fruit—Right to—If passes to the transferee.*

Per Full Bench: *Iqbal Ahmad, J., contra*—On the transfer of proprietary rights in sir land on which a grove stands, the right to the possession of the trees and their fruits remain with the transferor, unless he relinquishes this portion of his ex-proprietary rights, or the whole of his ex-proprietary rights in accordance with S. 15, Agra Tenancy

Iqbal Ahmad and Ali, JJ.) **FIR.**

LIAQAT ALI I L R (1939) All 518 =

11 R.A. 576 = 1939 O L R 323 = 1939

1939 A.W.R. (H.C.) 278 = 15

A I R 1939 All 291 (F.B.)

GUARANTEE—Person entrusted with money for investment on landed property lending on promissory notes in his own name—Subsequent endorsement of notes to owner of money promising to take executant to the indorsee and clear the loan—If guarantee See **NEGOTIABLE INSTRUMENTS ACT. S. 35** (1939) 1 M L J 897

GUARDIAN AND WARD

See (1) GUARDIANS AND WARDS ACT.

(2) HINDU LAW.

(3) MAHOMEDAN LAW.

(4) MINORS

GUARDIANS AND WARDS ACT (VIII OF 1890)—*Jurisdiction of Court under—Consent order for payment of money by husband to wife or school authorities of minor children*

GUARDIANS AND WARDS ACT (1890), S. 25.

—S. 7—Appointment of guardian—Compromise by applicants—Duty of Court.

The appointment of a guardian of a minor cannot be settled by an agreement between the contesting applicants for guardianship. The Court has to consider the welfare of the minors on evidence before it and not to pass judgment in accordance with the terms of a compromise. It is the duty of the Court to consider whether or not the compromise is in the interests of the minor. (*Ram Lall, J.*) **HASSAN BIV NEK ALAM** 41 P L R, 678.

—S. 7—Guardian of property of minor—Appointment of—Enquiry as to property—Necessity for.

In an application for the appointment of a guardian the Court has to be shown that there is no enquiry for such be a lengthy and basis for finding that there is some property at all (*Ram Lall, J.*) **HASSAN BIV NEK ALAM** 41 P L R 678.

—S. 7—Minor over 17 years—Appointment of guardian—Propriety.

It is not proper for a Court to appoint a guardian of a person of a minor who is at least over 17 years old, as he comes of age very soon. The order of appointment would simply deprive him of his right to manage his own affairs for three years more. It is not for the Courts to moralize on the advantage of keeping a youth under tutelage for a longer period than the law ordinarily contemplates (*Addison and Ram Lall, JJ*) **VISHWA NATH SAREEN v. MT. KARAM DEVI** 182 I C 992 = 12 R L 96 (2) = 41 P L R 542 =

A I R. 1939 Lah 221.

—Ss 7 (3) and 39—Guardian appointed by will—Power of Court to appoint another guardian.

If a guardian has been appointed of the persons and after by means of proceed with the until the guardian om guardianship ie Guardians and **ABDUL QADIR v. ABDUL QADIR** 41 P L R 12 nor girl below 18 'anism and marriage with Mahomedan—Validity—Absence of father's consent or knowledge—If fatal embraces is under 18 rison and necessary

under O 21, R. 11, C. P. Code whereupon the Court recommended that the order was made without

—S. 25—Discretion of Court—Fiduciary nature of guardian's position—Enquiry

within the general comp and the order was a v however was not a deci decree holder, the wife, whole amount might decree in that form cannot be regarded as a decree for payment of) O 21, R. 11 J.) **NARIN**

GUARDIANS AND WARDS ACT (1890), S 25

A father of a minor is not entitled to apply under the

powers Where a father delivers his infant daughter to the custody of another and for over 15 years takes no interest in her, but allows others to do what as a father he should do and the girl is brought up by that other person and is never again received in her father's house, it is a
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fathe
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and

of an injunction restraining the person having custody of the minor from marrying her to a man who has been chosen by that person (*Leach C J and Krishnaswamy Ayyangar, J*) SIVASANKARA MUDALIAR v RADHA BAI AMMAI 1939 M W N 483 = 50 L W 520 = A I R 1939 Mad 611 = 1939 2 M L J 515

—S 25—Minor girl below 18 years of age—Change of religion from Hinduism to Mohammedanism and marriage with Mohammedan—Father's right to custody—If lost

and otherwise as in all wards Act, the custody of the minor is to be decided on the side her own preferences in her own interest and for her good Further a father does not lose the right of custody of his minor child if he becomes converted to another religion or if his child becomes so converted (*Datta J C*) MAHOMED ALAM In re A I R 1939 Sind 311

—S 27—Duties of guardian—Purchase of land for minor—Propriety of—Agent of de jure guardian

man who is acting carefully with
Though a guardian in possession of minor's property may fall under S 94 of the Trusts Act if he holds in every case to come within S Act as the word so far as may be make it subject to S 27 of the Guardianship who effected a partition and separated from his brother S, died subsequently leaving a pregnant widow and a

found that the purchase was a prudent act, though later on depression in the market rendered it a losing bargain.

of the principal and legal guardian was a complete reply to any action taken by the minor against S (*King*

HIGHWAY.

and Abdur Rahman, JJ) SITHALINGA CHETTI v

49 L W 611 =
—A I R 1939 Mad 615 =
(1939) 1 M L J 745

—Application to Court by guardian for sanction for ward's marriage—Order on appeal—If lies

The performance of the marriage of the ward is one of the proceedings of a guardian referred to in S 43, of the Guardians and Wards Act and an order refusing to

HABEAS CORPUS—Writ of—High Court's power to issue prerogative writ after the passing of the Cr P Code Sec CR P CODE S 491

43 C W N 981—A I R 1939 P C 213 (P C).

HIGH COURT—Jurisdiction to grant injunctions apart from O 39, R 1 of C P Code Sec C P CODE O 39, R 1 A I R 1939 Cal 642

HIGH COURTS ACT (1861) S 9—Scope—If inconsistent with Cl 10 Letters Patent (Patna)—

HIGHWAY—Claim to right of way over village path—Suit by section of public—Maintainability—Proof of special damage—Necessity Sec C P CODE S 91

20 Pat LT 414
—Highway authority—Liability for mere nonfeasance Sec TORT—HIGHWAY AUTHORITY

1939 A W R (H C) 126 = 1939 A L J 101

—Obstruction—Suit for establishing right of way and for removal of obstruction—Maintainability—Proof of special damage—Necessity Sec C P CODE S 91

(1939) 1 M L J 392
—Religious processions—Right to take out—Limits

of every sect are entitled to take out religious processions with appropriate observances along a highway provided they do not interfere with the ordinary use of the highway or contravene the orders of the Magistrate

the maintenance of peace
procession along a highway does not depend on the necessity of the case nor is it a question of the number of persons taking part in it and

1939 M L J 39 (C)
—Rights of public—Municipality proposing to sell portion of public street in front of plaintiff's shop—Plaintiff's right to sue for injunction

For owners of houses abutting on a public highway the question of frontage means a great deal and if anything is done by those in whom the highway vests which interferes with the rights of the owners with regard to the highway, and which tends to diminish the comforts of the occupants of the houses the owners have an actionable claim against them Where therefore

to sell a portion of a highway for the purpose of merely got a new gate which persons coming from the railway station to the main gate of the Mandi have to pass, the plaintiff is entitled to sue the

HIGHWAY.

Municipal Committee for an injunction restraining them from selling the portion of land (*Blacker, J.*) KASTURI LAL SANT LAL v. MUNICIPAL COMMITTEE, JAGRAON. 41 P.L.R. 548 = A.I.R. 1939 Lah 199.

—*Rights of public—Right to use every part of public street.*

The public have a right to use every part of a public street, not merely the metalled portion in the centre (*Blacker, J.*) KASTURI LAL SANT LAL v. MUNICIPAL COMMITTEE, JAGRAON. 41 P.L.R. 548 = A.I.R. 1939 Lah 199.

HINDU LAW.

Adoption.
Alienation.
Applicability.
Custom.
Damsupat.
Daughters.
Debts.
Family settlement.
Guardianship.
Impartible estate.
Inheritance.
Joint family.
Maintenance.
Marriage.
Partition.
Religious Endowments.
Reversioners.
Stridhana.
Succession.
Texts.
Widow.
Wills.

—Adoption.
BOMBAY SCHOOL.
CEREMONIES.
ESSENTIALS.
EVIDENCE OF.
JAINS.
POWER TO ADOPT.
RESULTS.
SUBSEQUENT BIRTH OF SON.
VALIDITY.
WIDOW—AUTHORITY TO ADOPT.

—*Adoption—Bombay School—Alienation by coparcener prior to adoption not supported by justifying necessity and in excess of share—Right of adopted son to challenge same.*

Under the Mitakshara as interpreted in the Bombay Presidency an alienation by a coparcener of his share even if it is not supported by justifying necessity, and an alienation in excess of his share are binding on a subsequently adopted coparcener as they are on his own son. A son adopted subsequent to such alienation

268 =
A.I.R. 1939 Bom 178.

—*Adoption—Bombay School—Mother's power to adopt—How affected by the death of the son.*

If a son dies before attaining full legal competence and without leaving either a widow or a son or an adopted son, then the mother's power to adopt which was in abeyance during the son's lifetime revives, but the moment he hands the torch on to another, the mother can no longer adopt him. Whether before or after death

HINDU LAW—Adoption.

is handed, is quite immaterial. (*Bose, J.*) BAPUJI v. GANGARAM. 180 I.C. 792 = 11 R.N. 396 =

1938 N.L.J. 476 = A.I.R. 1939 Nag 47.
—*Adoption—Ceremonies—Adoption of daughter's son by Brahmins in South India—Datta homam—If essential for validity of adoption.*

Among the Brahmins in South India, *datta homam* is not essential to the validity of an adoption of a daughter's son. Although the general rule is that *datta homam* is necessary among the twice-born classes, there is an exception to that rule based on a text of *yama* in the case of a brother's son and a daughter's son (*Leach, C. J. and Patanjali Sastri, J.*) SAMINATHA IYER v. VAGESAN. 185 I.C. 37 = 50 L.W. 270 = 1939 M.W.N. 827 = A.I.R. 1939 Mad 849 = (1939) 2 M.L.J. 557.

—*Adoption—Ceremonies—Declaration of acceptance of child in adoption by adoptive mother—Necessity.*

Where performance of certain ceremonies together with the giving and taking in adoption are proved, the fact that the adoptive mother did not make a formal declaration of acceptance of the adopted boy does not vitiate the adoption. (*Hamilton, J.*) RAM NATH TEWARI v. BARE LAL. 181 I.C. 425 = 12 B.O. 117 = 1939 O.W.N. 905 = 1939 O.A. 741 = 1939 O.L.R. 624 = 1939 A.W.R. (C.C.) 220.

—*Adoption—Ceremonies—Giving and taking—Evidence of—Presence of boy when Sub-Registrar questioned father and widow about execution of deed.*

In the case of an adoption by a registered deed, evidence that the boy was present at the time of the registration proceedings when the Sub-Registrar put to his father and the widow who adopted him the questions whether they had executed the deed, is sufficient to prove a giving and taking (*Sir George Rankin*). BIRADH MAL v. PRABHABHATI KUNWAR. I.L.R. (1939) Kar 258 = 5 B.R. 631 = 181 I.C. 311 = 11 R.P.C. 249 = 1939 O.L.R. 318 = 43 C.W.N. 842 = 1939 O.W.N. 562 = 41 Bom L.R. 1061 = 70 C.L.J. 377 = 1939 P.W.N. 891 = A.I.R. 1939 P.C. 152.

—*Adoption—Ceremonies—Giving and taking—Necessity for—Adoption of orphan—Validity—Marwar.*

According to law now prevailing in Marwar the ceremony of giving and taking is not at all necessary and all that is required is a registered deed of adoption. Consequently the adoption of an orphan if evidenced by a registered deed of adoption, must be held to be valid in Marwar (*Nawal Kishore, C. J. and Ranjitmal, J.*) BAKTAWARLAL t. GODAWAKI. 1939 M.L.R. 30 (O).

—*Adoption—Essentials of Validity—Mere execution of adoption deed—Sufficiency—Admission in deed that adoption has been effected in Shastraic form—*

he Hindu law,
absolutely neces-
and the law

does not accept any substitute for it. There cannot therefore be an adoption by the mere execution of a deed of adoption intending to make an adoption in future. Where however, a deed is executed by a person stating that an adoption had already taken place in the *Shastraic* form such an admission should be given its full weight, in the absence of evidence showing that the admission is untrue or was made by mistake or fraud or other vitiating circumstances, and the fact of adoption to be taken to be established.

ugarsulu Mudaliar, J.J.)
17 Mys L.J. 152 =
44 Mys H.C.R. 124.

HINDU LAW—Adoption

—Adoption—Evidence of—Oral evidence—Sufficiency

An adoption deed, however, is not necessary to prove an adoption. It may be satisfactorily proved by oral evidence (*Wadia and Norman, JJ*) SANVEERANGOUDA v BASANGOUDA 184 IC 337=12 RB 161=41 Bom LR 561=AIE 1939 Bom 313

—Jains—Adoption—Law governing—Pre-emption See HINDU LAW—APPLICABILITY 41 Bom LR 760

—Adoption—Jains—Widow—Power to adopt with out authority from husband or consent of his collateral—Rights of adopted son

It is well settled that a Jain widow can adopt without authority from her husband and the consent of his collaterals. This is common to all the Jains and there is no difference on this point among the different subsects of the Jains. Among Jains, adoption confers on the adopted son all the rights of a natural born son and he succeeds to all the property of his adoptive father (*Zia ul Hasan and Hamilton, JJ*) NEMI CHAND v SANTOSH CHAND 14 Luck 483=11 BO 236=180 IC 129=1939 OLR 124=1939 OA 265=1939 OWN 231=AIE 1939 Oudh 113

—Adoption—Power to adopt—Mother and sister

According to Hindu Law, only a wife can adopt to her husband and no other female can adopt to any other male. Thus a mother cannot adopt to her son nor a sister to her brother. Similarly the authority to adopt can be given to the widow alone and not to any other person (*Sukhdeo Narain, J*) KALYANDUTTA v ASKARAN 1939 MLR 155 (CIV)

—Adoption—Results—Adoptee having natural born son before adoption—Right to give such son in adoption after his adoption

There is no express text of Hindu law or judicial decision depriving an adopted son of his right to give away in adoption his natural born son who was born to him before his adoption. Such a restriction cannot be imposed upon him. He can therefore validly give in adoption his natural born son though he himself has already passed to another family by adoption (*Beaumont C J Wadia and Lokur, JJ*) MARTAND JIWASI v NARAYAN KRISHNA 184 IC 65=12 RB 148=41 Bom LR 845=AIE 1939 Bom 305 (FB)

—Adoption—Results—Gayawals of Gaya—Custom—Gift of Gadi by sonless Gayawal—Effect—Donee—If adopted son of donor—If effects severance from natural family—Adoption in Dattaka form—Distinction

Among the Gayawals of Gaya, the Mitakshara School of Hindu Law holds that when a sonless Gayawal makes a gift (business) to another, the latter is usually called his adopted son. The Gayawals are also known as the Pandas of Gaya whose main source of income is the Jatri business and Jatri books maintained by them are considered to be property. A donee of the Gadi (family business) is known as the donee. Such adoption is not of course accepted sense of the term under cannot have the effect of removal from his natural family. It cannot, however, be laid down as a proposition that among the customary rules regarding adoption are such a man may regularly be adopted into an and still retain his interest in the estate father. An adoption among them in cannot fail to have its usual consequence of loss of rights of the adopted son in his natural (*Roulard and Chatterji, JJ*) NARAYAN I BULAK LAL, 11 EP

HINDU LAW—Adoption

180 IC 990=5 BE 516=20 PLT 432=AIE 1939 Pat 416

—Adoption—Subsequent birth of son to adoptive father—Share of adopted son in father's property at against after born son—Partible and impartible property—Distinction

In Western India, both in the districts governed by the Mitakshara and those specially governed by the authority of the Vyavahara Mayukha, the right of an adopted son where there is one legitimate son born after the adoption, extends only to a fifth share of the father's estate on the principle that the adopted son takes a fourth of the legitimate son's share. So far as impartible property is concerned, namely watan property, the after born son is exclusively entitled to succeed to the watan property as he has precedence over the adopted son (*Beaumont C J, Rangnagar and Wadia, JJ*) SAHEBGOUDA v SHIDDANGOUDA

ILR (1939) Bom 314=181 IC 803=11 RB 353=41 Bom LR 333=AIE 1939 Bom 166 (FB)

—Adoption—Validity—Law in Marwar—Registered deed—If necessary

The Law in Marwar relating to adoptions is different from the law in British India. According to law in British India for an adoption to be valid it is not necessary to execute a deed and therefore there can be a valid adoption even in the absence of an adoption deed. Here in Marwar however a law has been passed whereby the Courts are precluded from recognising an adoption unless the same is evidenced by a writing duly registered (*Ranjitmal and Sukhdevnarain, JJ*) FOJMAL v MST SINGARI 1939 MLR 60 (C)

—Adoption—Validity—Payment of money to widow

In order that an adoption deed may be declared invalid on the ground of acceptance of pecuniary consideration by the widow the plaintiff must show that the deed had been executed on account of greed for money or bribe offered to the widow. 35 Bom 169, Fol (*Nawal Kishore C J and Sukhdeo Narain, J*) MST RAMBHA v RUGHNATH

1939 MLR 105 (CIV)

—Adoption—Validity—Sister's son—Marwar

According to Hindu Law the adoptee must not be a boy whose mother the adopting father could not have legally married. But an adoption though prohibited under this rule may be valid if sanctioned by custom.

according to the
Kishore C J
GODAWARI
1000 MLR 30 (C)

—Adoption—Widow—Authority to adopt—Construction of power

Where a Hindu testator by his will confers a power upon his widow to adopt a son within 10 years of his

adoption of one of her husband's brothers' sons more

HINDU LAW—Adoption.

50 L. W. 377 = A I R. 1939 P. C. 222 =
(1939) 2 M. L. J. 479 (P. C.)

—Adoption—Widow—Authority to adopt—Construction—Will authorising widow to adopt a boy from

last will and testament gives his widow authority to adopt "a suitable boy from our family belonging to the same gotra as myself". It is in accordance with that authority if the widow adopts a boy outside the gotra. An adoption of a boy not belonging to the same gotra is invalid though it may be that no boy of the said gotra is available (*Panirang Rao and Venkataramana Rao, Jfs.*) SUNDARASIVUDU v. ADINARAYANA SASTRI 1939 M. W. N. 994 = 50 L. W. 500 = A I R. 1939 Mad. 909 = (1939) 2 M. L. J. 614

—Adoption—Widow—Authority to adopt—Presumption

Where a person admits the factum of adoption but disputes the existence of an authority in favour of the widow to adopt, the presumption is in favour of the authority and the person opposing must rebut it (*Nasool Kishore, C. J., and Ramnimal, J.*) BAKTA WARLAL v. GODAWARI 1939 M. L. R. 30 (C)

—Adoption—Widow—Co widow—Authority to adopt—Construction—Will authorising co-widows to separately make adoptions—Adoption by junior

Absence of refusal by senior widow to adopt or sent to such adoption—Effect on validity of adoption

A Hindu who had two wives died leaving a will provided, *inter alia*, "if after my lifetime, both of us, the two wives" "do not agree to live together, dividing the said properties into two equal shares you shall separately make adoptions." Shortly after the death of the testator the junior widow made an adoption without the consent of the senior widow who was alive but who did not object.

Held, that the intention to be inferred from the provision in the will was to authorise each of the widows to adopt according to the rules of Hindu Law, namely that the senior widow should have the right which would only pass to the junior widow if the senior widow refused to adopt or consented to an adoption by her. Since there was no such refusal to adopt by the senior widow, the adoption by the junior widow must be held to be invalid (*Widow Gowdu v. Muniammal*) 1939 M. W. N. 1170 = (1939) 2 M. L. J. 805

—Adoption—Widow—Powers of—Coparcenary becoming extinct by partition—Widow of coparcener dying long before partition—Adoption by—Validity.

On the extinction of a Hindu coparcenary, the widow of a coparcener before such partition cannot make an adoption. There is then no undivided family into which an adopted son can be admitted by virtue of his adoption made by a widow in such a case. The adoption is not valid (*Rangnagar, J.*) HIRACHI SOJPAL I. L. R. (1939) Bom. 512 = 41 Bom. L. R. 760 = A I R. 1939 Bom. 313

—Adoption—Widow—Powers of—Limits to—Death of last surviving coparcener unmarried—Succession by mother—Adoption by latter—Subsequent adoption by widow of predeceased coparcener—Validity—If receives coparcenary or divests estate already vested

It is settled law that where a widow who has succeeded as heir to person makes an adoption, the estate she

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has inherited from her son is divested and the adopted son becomes the owner. That is to say, the adopted son becomes the natural born son. Where the adoption takes place after the termination of the coparcenary by

the death of the last surviving coparcener or those who were coparceners at the time of the death of the last surviving coparcener, the adoption is valid.

Then M died leaving his widow and a son. The latter, a minor, died unmarried, and was succeeded by his mother as heir. This widow (widow of M), adopted the defendant to her husband. After this, Y's widow adopted the plaintiff to her husband. The plaintiff filed a suit against the defendant for partition claiming a half share and the family properties in the possession of the defendant.

Held, that though the adoption of the plaintiff was valid, it had not the effect of reviving the coparcenary which came to end on the death of the minor son of M, or divesting either M's widow or her adopted son, the defendant. (*Broomfield and Sen, Jfs.*) RUDRAPPA YELLAPPA v. MALLAPPA 41 Bom. L. R. 1277

—Adoption—Widow—Simultaneous adoption of two sons—Validity

A simultaneous adoptions by a widow of two sons to

—Adoption—Widow in Bombay—Powers of—Widow inheriting to gotraja sapinda of husband—Adoption of son to husband—Validity—Property—If vests immediately on adopted son

The widow of a gotraja sapinda in Bombay who succeeds as heir to an agnate of her husband stands in the same place as her husband, if living, would occupy. She can make a valid adoption to her husband and the property inherited by her would, on such adoption, immediately vest in the adopted son, who would thereupon be entitled to the same from an alienee as the widow herself. (*Shivappa v. I. C. 956 = 11 R. B. 322 = A I R. 1939 Bom. 123*)

—Adoption—Widow of deceased coparcener—Adoption by during continuance of coparcenary represented by sole surviving coparcener—Validity—Right of adopted son to share in joint property.

As long as there is a single coparcener left, the coparcenary cannot be extinct. Where the adoption by a widow of a deceased coparcener is valid, the adopted son is entitled to share in the joint property of the coparcenary. (*Shivappa v. I. C. 956 = 11 R. B. 322 = A I R. 1939 Bom. 123*)

—Adoption—Widow's right to adopt—Nature of right—Divesting of estate.

Where the adoption takes place after the termination of the coparcenary by the death of the last surviving coparcener, the adoption by a widow of a deceased coparcener has not the effect of reviving coparcenary and does not divest the property from the heir of the last surviving coparcener other than the widow or those

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claiming through him or her. This view however would not affect the validity of the adoption itself, as the power to adopt depends on considerations of a religious character (*Nival Kishore C J and Sukhdanarain, J*)
BHERONDON V KHETDAN

1939 M L R 95 (Civ)

—Alienation

See also H L DEBTS

CO PARCENER'S SHARE PURCHASE OF
DAUGHTER INHERITING FATHER'S PROPERTY
DUTY OF LENDER
FATHER
JOINT FAMILY
LEGAL NECESSITY
MANAGER
MORTGAGE BY ADOPTIVE MOTHER
SOLE SURVIVING CO PARCENER
VALIDITY
WIDOW

—Alienation—Coparcener—Purchaser of share from—Right's of—Suit for partition—Limitation for—Limitation Act Arts 120 142 and 144—Applicability

in place of the vendor or a right to have joint possession of the family property in place of the vendor, nor of course does he acquire any right to possession of any specific part of the property that being a right which the vendor himself did not possess. The only right which the purchaser has in such a case for partition and procure to be allotted share which would have gone to his venditor it follows that the purchaser cannot rely on the rule that the possession of one co-tenant of all and the possession of the other cannot help him, secondly, the possession of the parties cannot be adverse to the purchaser, adverse possession denotes the exclusive possession, and since the venditor is entitled to possession he cannot be excluded for partition by the purchaser neither Art 142 nor Art 144 would apply as there is no case of adverse possession.

184 I C 23=12 R B 135=
41 Bom L R 631=A I R 1939 Bom 322

—Alienation—Daughter inheriting father's property—Powers of alienation—Improvements to property—If justifies alienation

A limited owner such as a daughter inheriting her

Iyer and Singaravelu Mudaliar JJ SOORAPPA V SUBBIAH 44 Mys H C R 332

—Alienation—Duty of lender—Necessity proved—Proof of application of money if necessary

When once an alienation has been proved to be for legal necessity the creditor is not bound to prove further the actual application of the money borrowed (*Zia ul Hasan and Hamilton, JJ*) **LALTA V AVADH NARESH SINGH** 184 I C 443=12 R O 121=

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1939 O W N 920=1939 O L R 626=

1939 A W R (C C) 222

—Alienation—Father—Power to alienate son's share—Conditions—Antecedent debt—Illegality or immorality—Burden of proof—Mortgage and sale—Distinction between

A Hindu son is under a pious obligation to pay his father's debt which is not illegal immoral or *avyavaharika*. But this does not empower the father to alienate his son's share in the ancestral property except for a legal necessity or for the benefit of the family or for the payment of an antecedent debt not incurred for immoral or illegal purposes. Once it is proved that there was an antecedent debt, genuinely independent of the subsequent transaction of alienation or that the alienee inquired and believed in good faith that such a debt existed and that the alienation was made for satisfying that debt, the burden of proving the immoral or illegal character of the debt lies on the son who impugns the alienation. The burden is not discharged by merely showing that the father was leading an extravagant and dissolute life, it must be proved that the particular debt

family. In the case of a sale it would not be set aside if a substantial portion of its consideration was required for a legal necessity or benefit of the family or to pay off an antecedent debt not illegal or immoral.

CHANDRA V RAMCHANDRA NARAYAN
41 Bom L R 779=A I R 1939 Bom 396

—Alienation—Father's alienation and manager's alienation—Distinction—Alienation to discharge antecedent debt—Binding nature of—Necessity to prove legal necessity

There is a well established distinction under the Hindu Law between the powers of a manager in respect of the shares of coparceners who are his sons and in respect of the shares of other coparceners. A manager who is a father can charge the joint family property with the payment of his own antecedent debts not tainted

red for legal necessity (*Beaumont, C J, and Lokur, J*) **SHIDAYA V BASAPRABHAPPA**

I L R (1939) Bom 413=183 I C 568=
12 R B 110=41 Bom L R 441=
A I R 1939 Bom 301.

—Alienation—Joint family—Coparcener—Mortgage by one—Suit against his widow—Maintainability

Where a mortgagee from a member of a joint Hindu family sues the widow of that member alone after his

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death on the basis that her husband had died divided, when it is to be seen that the fact that the family

had acquired by survivorship the interest of the deceased member and so the widow could not represent the estate. (*Bennet and Verma, J.J.*) **BANSIDHAR UPADHYA v. MIST. GUJRATI.** 1939 A.W.R. (H.C.) 615 = A.I.R. 1939 All 688.

—*Alienation—Joint family—Manager—Benefit of the family—Purchase of lands.*

From no point of view can it be said to be beneficial

the family—*Saving of a sister's son's property*

The saving of the property of a sister's son is not a purpose which could be legal necessity for a joint Hindu family, to justify a borrowing, by the manager, for the sister's son belongs to another family and his property is unconnected with that of the joint family. (*Bennet and Verma, J.J.*) **SURAJPAL SINGH v. PANCHAITI AKHARA UDASI NIRWANI.**

183 I.C. 270 = 12 R.A. 110 = 1939 A.L.J. 604 = 1939 A.W.R. (H.C.) 350 = A.I.R. 1939 All 486

—*Alienation—Joint family—Manager—Justification.*

The possibility of the manager's interest in the joint Hindu family property being brought to sale would not justify a manager to mortgage the whole of the joint family property for a liability which was a personal one of his own. (*Bennet and Verma, J.J.*) **SURAJPAL SINGH v. PANCHAITI AKHARA UDASI NIRWANI.**

183 I.C. 270 = 12 R.A. 110 = 1939 A.L.J. 604 = 1939 A.W.R. (H.C.) 350 = A.I.R. 1939 All 486

—*Alienation—Joint family—Necessity—Marriage expenses of male coparcener—Dayabhaga school.*

Under the Dayabhaga school of Hindu Law the marriage expenses of a male coparcener are to be met out of the entire joint estate. A sale of the joint estate for the purpose of raising money for meeting such expenses is, therefore, valid. (*Sen, J.*) **MON MOHAN BHATTACHARJEE v. BIDHU BHUSAN DUTT.**

185 I.C. 6 = 69 C.L.J. 188 = 43 C.W.N. 295 = A.I.R. 1939 Cal 460

—*Alienation—Joint family—Necessity—Retention of money with vendee and drawing from time to time*

Where an alienor needs money for maintenance and leaves part of the consideration with the alienee and takes money out of it as it is needed it cannot be said that the alienation is not justified by legal necessity. Similarly money might be needed for the marriage or education of children which might take place after alienation. (*Thomas, C.J. and Ganga Nath, J.*) **RAMADHIN SINGH v. GAJRAJ SINGH.**

1939 A.L.J. 358 = 183 I.C. 789 = 12 R.A. 167 = 1939 A.W.R. (H.C.) 342 = A.I.R. 1939 All 513

—*Alienation—Joint family—Setting aside—Burden of proof—Minors not born at the time of mortgage.*

Where certain minor members of a joint Hindu family, who were not born at the time of the mortgage of family property by the adult members, challenge it

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and prove that there was at the time of the transaction

the execution of the mortgage also died prior thereto if he desired to deprive the minors of their right to challenge the mortgage. (*Bennet and Verma, J.J.*) **SURAJPAL SINGH v. PANCHAITI AKHARA UDASI NIRWANI.** 183 I.C. 270 = 12 R.A. 110 = 1939 A.L.J. 604 = 1939 A.W.R. (H.C.) 350 = A.I.R. 1939 All 486.

—*Alienation—Joint family—Setting aside—Minor*

there was no gap between the birth of another, in order he alienation. (*Bennet and SINGH v. PANCHAITI*

183 I.C. 270 =

12 R.A. 110 = 1939 A.L.J. 604 =

1939 A.W.R. (H.C.) 350 = A.I.R. 1939 All 486.

—*Alienation—Joint family—Setting aside—Minor not alive on the date of mortgage—Competency to challenge—Limits of the rule as to*

Granting that a minor born after the execution of the mortgage where there was no minor existing at the time of execution cannot raise the question of want of legal necessity, it cannot be said that the rule will apply in a case where the Court has held that the mortgage transaction can be validly challenged in regard to certain items. (*Bennet and Verma J.J.*) **SURAJPAL SINGH v. PANCHAITI AKHARA UDASI NIRWANI.**

183 I.C. 270 = 12 R.A. 110 = 1939 A.L.J. 604 = 1939 A.W.R. (H.C.) 350 = A.I.R. 1939 All 486.

—*Alienation—Joint family—Validity—Acts to be proved—Long lapse of time—Presumptions to fill in details.*

In order to prove the validity of an alienation, a transferee ought to prove either that there was legal necessity in fact or that he made proper and bona fide inquiries as to the existence of such necessity and did all that was reasonable to satisfy himself as to the existence of such necessity where there has been a long lapse of time since the alienation, it is not reasonable to expect such full and detailed evidence of the circumstances which gave rise to the sale as in the case of alienation at a more recent date and pre-exceptions are permissible to fill in the details which have been obliterated by time. (*Thomas, C.J. and Ganga Nath, J.*) **RAMADHIN SINGH v. GAJRAJ SINGH.**

183 I.C. 789 = 12 R.A. 167 = 1939 A.L.J. 358 = 1939 A.W.R. (H.C.) 342 = A.I.R. 1939 All 513.

—*Alienation—Legal necessity—Mortgage by all adult members—Money raised for purchasing new properties for family in place where family already owns lands—Mortgage—If valid as being for legal necessity.*

Legal necessity justifying an alienation of ancestral property by the karta of a Hindu joint family should not be confined to transactions of a purely defensive nature. If transactions are entered into by the manager or by the adult members which benefit the family and the estate, and are such as a reasonably prudent man would enter into, they can be said to be supported by legal necessity. Where all the adult members of a family join in executing a mortgage of family property to raise money for the purpose of purchasing

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the financial point of view, a profitable transaction, it must be held that it is for the benefit of the family and eminently one which a reasonably prudent manager would enter into. In such circumstances the manager and the adult members are entitled to raise money and to charge the family property with the repayment of that money (*Harries, C J and Manohar Lall J*) SHITAL PRASAD SINGH v AJAB LALL MANDAR
18 Pat 306=5 BR 930=183 IC 323=
12 R P 127=20 P L T 663=
1939 P W N 222=A I R 1939 Pat 370

—Alienation—Manager—Binding character—Part of consideration not applied for benefit of family—Effect—Sale and mortgage—Distinction
In the case of a sale of family property the manager of a Hindu joint family, if it is shown that the sale was necessary, the sale cannot be set aside on the ground that the consideration was not applied for the benefit of the family. The sale must either be upheld or set aside and cannot be held good in part and bad in part. But this principle does not apply to the case of a mortgage. A mortgage may

183 IC 568=12 RB 110= 41 Bom LR 441=
A I R 1939 Bom 261

—Alienation—Necessity—A manager of a joint Hindu family is not purchasing property by executing a mortgage and raising a loan therefor merely. The purchase is a prudent one. But when the loan is clearly beneficial to the estate and has been approved by the other coparcener or coparceners it must be held sufficient to establish that it is for the benefit of the estate so as to bind the coparceners (*Beaumont C J and BASAPRABHAPPA I*)
183 IC 568=12 RB 110= 41 Bom LR 441=
A I R 1939 Bom 301

—Alienation—Mortgage by adoptive mother—Suit against adoptive son—Plea that part of consideration is not for legal necessity—Sustainability—Sale and mortgage—Distinction
In a suit against an adopted son to enforce a mortgage executed by his adoptive mother it is always open to the defendant to contend that a part of the mortgage debt is not binding upon him or upon his share of the mortgaged property on the ground that it was not borrowed for legal necessity. Although this plea is not applied in considering whether an alienation is necessary, it is the case that in the case of a sale it cannot be set aside for a larger sum than immediately

amount against one defendant, and for one part of the amount only against another defendant. In enforcing a

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interest in the mortgaged property, the mortgage, is good only for that part of the mortgage debt which was required for legal necessity (*Beaumont, C J and Wadia, J*) PURUSHOTAM v GANGADHAR
ILR (1939) Bom 560=41 Bom LR 931=
A I R 1939 Bom 445

—Alienation—Sole surviving coparcener—Powers of—Adoption of son by widow of deceased coparcener—Alienations by sole surviving coparcener before and after adoption—Validity—Distinction—Debts incurred before adoption—If justifies alienation

It is well settled that a sole surviving coparcener under the Hindu law is entitled to dispose of the coparcenary property. He can alienate them when he has ceased to be solely entitled, in satisfaction of his private debts. When a sole surviving coparcener contracts debts but does not alienate the family property to pay them or create any

of a deceased coparcener adopts a son, must depend upon the facts. If he had incurred debts before he adopted a son, they were incurred before he became a coparcenary in the

or a son to her husband by the widow of a deceased coparcener will not bind the adopted son unless the alienee proves legal necessity or benefit or bona fide inquiry as to the necessity for the adoption by it (*Broomfield and UDRAPPA*)
183 IC 667=12 RB 119=
41 Bom LR 223=A I R 1939 Bom 266

—Alienation—Validity—After born son—Right to challenge alienation already effected before his birth

An after born son under the Hindu Law can only acquire an interest in the property which exists on the date of his birth excluding that which has already been alienated. In the case of property already mortgaged by the father the after born son can only succeed to the equity of redemption and cannot challenge the alienation to the mortgagee. If the mortgagee is a legal necessity—

property inherited about the consent of the reversioners to pass her own and Sukhdatta (*ram, J J*) DHOKALSINGH v KEVALRAM
1939 M L R 139 (Civ)

HINDU LAW—Alienation.

—*Alienation—Widow—Charitable or religious purpose—Dedication of property—Power.*

It would be very difficult to hold that the dedication of $\frac{2}{3}$ of the estate of the deceased by his widow to an

—*Alienation—Widow—Consent of reversioners—Consent obtained by false representations—Reversioner's right to recover property*

Where the consent of a reversioner to an alienation by a widow is obtained by false representations as to the existence of legal necessity made by her to him, the reversioner is not precluded from recovering possession of the alienated property from the alienee, who was aware of the fact that there was no legal necessity and did not pay any consideration to the widow for the sale. (*Nasim Ali and Henderson, JJ.*) HARENDRA NATH MUKHERJI v. HARI PADA MUKHERJI.

I.L.R. (1938) 2 Cal. 492 = 182 I.C. 852 = 12 R.C. 106 = A.I.R. 1939 Cal. 387

—*Alienation—Widow—Consent of reversioner—Effect.*

When a document of transfer supported by consideration is executed by a Hindu widow and the document is consented to by the next reversioner, that consent in

—*Alienation—Widow—Consent of reversioners—Effect of.*

—*Alienation—Widow—Co-widow—Power of alienation—Consent of both—Necessity—Religious endowment*

A Hindu widow is ordinarily entitled to make an endowment of a small portion of her deceased husband's estate, but when there are two widows, one cannot make it without the consent of the other, for they take a joint interest in the estate and no alienation could be effected without the consent of either. (*Thom, C.J. and Ganga-Nath, J.*) TEMPLE OF SHRI MADAN MOHANJI v. KRISHNA KUAR. 1939 A.W.R. (H.C.) 756 = 1939 A.L.J. 1001

—*Alienation—Widow—Discharge of husband's time barred debt—Mortgage for the purpose of—Validity—Later mortgage to pay barred claim in respect of earlier mortgage—Binding nature.*

Where a Hindu widow mortgages property to pay off the time-barred debt of her husband it is an alienation binding on the reversioners. But where later on she executes a fresh mortgage to pay off her earlier mortgage and finally executes another mortgage to pay off the claim under the prior one which had by that time become time-barred the last mortgage is not binding on the reversioners for this reason that it was executed only to pay off the widow's time barred debt and not the time-barred debt of her husband which had become extinguished by the first mortgage itself. (*Zia-ul Hasan and*

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Radhakrishna, J.J.) CHANDRIKA PRASAD v. BHAGWAN DAS. 185 I.C. 105 = 1939 O.W.N. 1028 = 1939 A.W.R. (C.C.) 292 = 1939 O.L.R. 692

—*Alienation—Widow—Gift to an idol—Consent of reversioner—Validating effect—Extent.*

The transfer by a Hindu widow is one for a portion of $\frac{2}{3}$ of the whole estate, there is no gift, or if at all only to a degree quite out of the extent of the transfer effected. The promise of the reversioner cannot validate a transfer otherwise bad and the consenting reversioners and those who claim through them cannot be held to be bound by it. Their consent amounts to nothing more than a promise without consideration to treat the alienation as valid at some future date. It does not come within the doctrine of estoppel or the doctrine of election or the doctrine of ratification, and the only doctrine, within the scope of which it can be brought, is the doctrine of definitive election. (*Thomas, C.J. and Yorke, J.*) DEBI DAYAL v. SRI RADHA KRISHNAN. 14 Luck. 595 = 180 I.C. 888 = 11 R.O. 261 = 1939 O.L.R. 214 = 1939 O.W.N. 346 = A.I.R. 1939 Oudh 145

—*Alienation—Widow—Lease neither prudent nor for benefit—Validity*

The fact that a lease for a term of years executed by a Hindu widow holding a limited estate was neither prudent nor for the benefit of the estate would not avoid the lease, but would merely make it voidable at the option of the reversioners on the determination of the widow's life-interest. (*Lord Porter.*) JUGAL KISHORE

1939 P.W.N. 385 = 5 B.R. 647 =

939 O.L.R. 931 =

1 I.L.J. 793 (P.C.).

necessity—*Jameo*

er's daughter's son

an alienation by a

(*J.J.*) RAM LAL

SINGH v. LALJI MISSER

5 B.R. 781 = 182 I.C. 561 = 12 R.P. 28 =

20 P.L.T. 773 = A.I.R. 1939 Pat. 287.

—*Alienation—Widow—Legal necessity—Pilgrimage to Gaya—Reversioner's right to challenge. See CUSTOM (PUNJAB)—ALIENATION—WIDOW*

A.I.R. 1939 Lah. 551.

—*Alienation—Widow—Necessity—Duty of alienor to make inquiry*

While dealing with a male karta of a joint Hindu family it may be enough for the purchaser to satisfy himself that a previous *zarpeshgi* which he redeemed was for consideration but in case of a Hindu widow an antecedent debt is of no effect unless such debt itself was incurred for necessity. (*Varma and Rowland, J.J.*) RAM LAL SINGH v. LALJI MISSER.

5 B.R. 781 = 182 I.C. 561 = 12 R.P. 28 =

20 P.L.T. 773 = A.I.R. 1939 Pat. 287

—*Alienation—Widow—Necessity—Proof—Recitals in deed—Value of*

The recitals as to the existence of legal necessity in a deed of transfer by a Hindu widow cannot by themselves be relied upon for the purpose of proving the facts contained therein. If such facts are admitted, the right of reversioner would always be defeated by insertion of carefully prepared details. (*Nasim Ali and Henderson, J.J.*) HARENDRA NATH MUKHERJI v. HARI PAD

HINDU LAW—Alienation.

MUKHERJI I L R (1938) 2 Cal 492 = 182 I C 852 =
12 R C 106 = A I R 1939 Cal 387

—*Alienation—Widow—Setting aside by reversioner—Mesne profits—Right to—Assessment of mesne profits—Date from which awardable—Money found payable to alienee—Interest on—Right to*

Where a Hindu reversioner sues for possession on the derived treated

three years prior to the date of suit. Even in cases in which the reversioner is directed to pay a certain sum of money as representing the portion of the consideration found binding on the estate, it must be held that the persons in possession are only entitled to claim interest on the amount found payable and are not on that account any the less liable for mesne profits. Where no mesne profits are awarded for certain period between the death of the widow and the commencement of the three years prior to the date of suit, no interest need be allowed in the alienee's favour either during that period (*Varadachariar and Abdur Rahman J J*) KRISHNA MURTHY v SATVANARAYANA

I L R (1939) Mad 917 = 1939 M W N 848 =
50 L W 260 = A I R 1939 Mad 824 =
(1939) 2 M L J 388

—*Alienation—Widow—Transfer of mother's interest in her deceased son's estate—Effect of*

A transfer by a Hindu mother of her interest in her

interest of a limited owner and is quite correctly and

—*Alienation—Widow—Validity—Election or ratification by reversioner—Doctrine of*

An alienation by a Hindu widow is, in voidable and it is open to a reversioner it or elect to treat it as good. But if such ratification or election he was in real facts as to legal necessity and was aware of his right to avoid the alienation of ratification or election is not attracted

—*Alienation—Widow—Validity—Major portion of*

HINDU LAW—Custom

—*Customary province—If Hindus—Hindu Law*

in a particular province in a district is then subject to the particular school of Hindu Law or the customary law applicable to the class to which the said Hindu belongs and recognised in that province. This law is not merely a local law. It becomes the personal law and a part of the status of every family which is governed by it. If he does not would be the silent in that is determined continue to

be of obligatory force on him. It cannot be denied that Nairs of Malabar in Madras are Hindus. The Marumakkathayam law which governs Nairs, whether it is a school of Hindu Law or a customary law, is a law which prevails in the Madras Presidency of which Malabar is a part followed and observed by a certain section of the Hindus (*Venkataramana Rao J*) VENKATARAMAN v JANAKI 1939 M W N 262 = 49 L W 403 = A I R 1939 Mad 595 = (1939) 1 M L J 520

—*Applicability—Jains—Adoption—Law governing—Presumption*

It is well established in the Bombay Presidency that the ordinary Hindu Law of adoption applies to Jains. The Courts start with the presumption that the Hindu Law of adoption would apply to Jains, and the burden of showing any custom contrary to the ordinary principle of Hindu Law of adoption is on the party who sets it up (*Rangnekar, J*) HIRACHAND v ROWJI SOJPAL I L R (1939) Bom 512 = 184 I C 876 = 41 Bom L R 760 = A I R 1939 Bom 377

—*Applicability—Mitakshara—Applicability to residents of Madnapore District—Presumption*

There is no presumption that the Hindu residents of t of Midnapore are governed by the Mitak (*Mit er J*) SUKDEB CHARAN JANA v IV PAL 43 C W N 395

—*Applicability—Sunni Bohras of Gujarat—Law—Widow inheriting property from husband's estate taken—Absolute estate or limited Hindu widow*

ni Bohras of Gujarat are governed by the of succession and inheritance though by edan law in other respects, and a widow inheriting from her husband takes only a widow's limited estate as under Hindu Law. A gift by her to the ratification by the on the death of the ally the heir of her father and not of her mother and she is entitled to take mother in spite of the (*J J*) NURBAI v 41 Bom L R 825 = A I R 1939 Bom 449

—*Custom—Kamaun—Collateral succession—Doctrine of representation—Basis of rule*

real basis of the Kamaun custom which modifies of Mitakshara as to collateral succession is that the estate is treated as if left by the last male in the family tree who has left male heirs. The result is that a man dies sonless his brothers do not inherit as brothers but as sons of the father to whom the estate reverted on the sonless man's death (*Bennet and Ernia, J J*)

HINDU LAW—Custom

—Custom—*Kamaun*—Full and half-blood—*Mitsikara*—Applicability—Presumption.

sentation is allowed. It is very doubtful if this principle can be applied in the case of *Maurals* who are among

—Custom—Overriding of law—Sufficiency of evidence—Recital in the *wajib-ul-ars*

Where there is a recital in the *wajib-ul-ars* about the

HINDU LAW—Debts.

—Right to act against father and his property—Conditions for enforcement—Duty of daughter to obey father

Hindu father to dependently of the ter his death, the untained out of his estate in the hands of his heirs That right extends to the joint family property in the hands of the surviving

and married by her parents independently of the possession of any property, can be conditioned only upon the readiness and willingness to surrender herself to the

gate amount of the principal and in old bond, the principal for the *damdupat* is the amount of the fre

TIKAMDAS MATIRADAS v KALI

I L R (1939) Kar

11 R S. 221 (2) = A . . .

—*Damdupat*, rule of—Applicability to mortgage-debts.

The rule of *Damdupat* is a rule of equity and is applicable both to simple as well as to mortgage debts. In applying this rule, however, to the mortgage debts distinction has to be made between cases where the amount of the annual rents and profits is fixed beforehand by the parties and it is agreed that the mortgagee is to receive that amount in lieu of interest or part thereof irrespective of the actual amount of rent that may be recovered by him and those where no such amount is fixed and there is no such agreement between the parties so that the mortgagee is under a liability to account to the mortgagor for the rents and profits received by him. In the former cases the rule of *Damdupat* would be applicable while to the latter cases the rule would not apply (*Nawal Kishore, C J., Ramnimal and Sukhdeo Narain, JJ.*) **MANGI LAL v RANJIDHAR**

1939 M L R 51 (C) (F B)

—Daughters—Estate taken—Dispute between brother and daughters of deceased—Compromise allotting some properties to brother and others to daughters—Latter to take jointly and to enjoy as of right—Nature of estate taken—If absolute estate or limited estate. See

COMPROMISE—CONSTRUCTION

48 L W. 939 =

(1939) 1 M L J 170

—Daughter—Maintenance and marriage expenses

maintenance and marriage even if she is kept out of his protection and custody (*Wassordew and Sen, JJ.*) **KUSUM KRISHNAJI v KPISHNAJI**

I L R (1939) Bom 396 = 183 I C 394 =

12 R B 94 = 41 Bom L R 445 =

A I R 1939 Bom 271

—*Dayabhog*—Manager's insolvency—Rights of Receiver See **PROVINCIAL INSOLVENCY ACT S 28**

A I R 1939 Cal 279,

—*Debts* See also **H L ALIENATIONS.**

AVYAVAHARIKA.

FATHER.

FATHER'S DEBTS

GUARDIAN

JOINT FAMILY.

MANAGER

MONEY BORROWED FOR FAMILY PURPOSES.

TRADING FAMILY

WIDOWS

—*Debts*—*Avyavaharika*—Purchase of motor car to ply for hire—If repugnant to good morals.

It cannot be said that the purchase of a motor car to ply for hire is repugnant to good morals and the debt borrowed for such a purchase is not a *yataharika*. (*Pollack J.*) **RAJESINGH JALAMSINGH**

182 IC 733 = 12 R N 28 = 1939 N L J. 161 =

A I R. 1939 Nag. 192

HINDU LAW—Debts

—Debts—Covenant by father binding on heirs to continue partnership with stranger—Death of father—Liability for loss after father's death *See* PARTNERSHIP—DISSOLUTION (1939) 2 M L J 279

—Debts—Decree against father and son—Attachment of father and son's interest—Insolvency of father—Effect on son's interest *See* PROVINCIAL INSOLVENCY ACT S 28 (1939) 2 M L J 708

—Debts—Father—Decree obtained on mortgage by father but property not brought to sale—Suit by sons for declaration that mortgage decree does not bind their rights—Maintainability

Even where a decree has been obtained on the mortgage executed by the father the debt not having been incurred for an immoral purpose the estate of the family is laid open to be taken in execution proceedings upon the mortgage decree. Hence a suit by the sons after the mortgage decree has been obtained but the property has not been brought to sale, for declaration that the mortgage decree shall not affect their reversionary rights (J J)

—Debts—Father—Mortgage by father for no consideration—Sons—If bonni—Suit on mortgage—Ex parte preliminary decree—Death of father—Sons impleaded as legal representatives—On a balance of factum and binding nature of decree and sale—Dispossession—Possession—Maintainability—C—Limitation

Where a Hindu father executes a mortgage of ancestral family property for which there is absolutely no consideration, it cannot be held binding on his sons. Where pending a suit on such a mortgage the mortgagor father dies after an *ex parte* preliminary decree is passed and the sons have not been added as defendants.

sons In the absence of an express declaration that he was being sued in that capacity this can only be established

S 53 C P Code deprive contest the existence of the being void it is unnecessary setting it aside Art 12 of the Limitation Act cannot therefore apply to the suit (*Pandurang Row and Abdur Rahman, J J*) LAKSHMADU v RAMUDU 50 L W 472=1939 M W N 918= A I R 1939 Mad 867

—Debts—Father—Mortgage by—Suit on—Decree—Sale in execution—Suit by sons to challenge sale—Necessity to prove that debt is illegal or immoral

Where a father has mortgaged joint family property and in execution of the mortgage decree the property is auctioned and the auction sale is completed, the sons who have failed to show that father's debts were for illegal or immoral purpose, cannot successfully challenge the sale which is complete (*Davis, J C and Tyabji,*

HINDU LAW—Debts

J) SUGNOMAL v CHUHERMAL I L R (1939) Kar 787=A I R 1939 Sind 297

—Debts—Father—Partnership with strangers—Covenant binding heirs and representatives to continue partnership—Loss to partnership after death of father—Liability of sons to pay to partnership *See* PARTNERSHIP—DISSOLUTION 50 L W 151=(1939) 2 M L J 279

—Debts—Father—Partnership with stranger—Liability to account for stranger partner's share of capital and profits—If antecedent debt sufficient to support mortgage by father—Sons and grandsons—If bound

Two brothers who started and carried on a 'mill' business for a few years presumably with family funds were obliged to take a new partner to continue the business. The new partnership was to run for five years and the profits and losses were to be shared equally between the new partner on the one hand and the two brothers (original partners) on the other. If any party wished to separate before the date he

ship Dissolution of the partnership resulted within four months of the agreement from the death of the new partner. The deceased partner's son being a

the minor ascertained with the help of mediators in discharge of the sum found due some outstandings of the business were assigned and a mortgage was executed for the balance by the two brothers. Within a few months thereafter one of the mortgagors died having four sons and a grandson. In a suit on the mortgage the minor pleaded that the mortgage was not binding on their side until the was in law and also was not an

the two sons of the father, that of the

mortgage in origin and that therefore the mortgage was binding on the sons and grandson of the deceased and Krishna wams GOUNDAN v BALA

422=49 L W 309=

S 53 C P Code deprive contest the existence of the being void it is unnecessary setting it aside Art 12 of the Limitation Act cannot therefore apply to the suit (*Pandurang Row and Abdur Rahman, J J*) LAKSHMADU v RAMUDU 50 L W 472=1939 M W N 918= A I R 1939 Mad 867

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Insolvency A t

A son is under no pious obligation to discharge a debt due by his father under a decree when such debt is extinguished by an order of discharge under the provisions of S 44 (2) of the Provincial Insolvency Act. The son's pious obligation arises on account of the existence of the father's debt. If the debt itself is extinguished, the very foundation of the pious obligation is gone (*Rowland and Chatterji, J J*) NATHUNI PRASAD v RADHA KISHUN DUTT RAI FIRM 6 B R 64= 181 I O 701

—Debts—Father—Suretyship debt—Decree—Right of sons to get a declaration that the ancestral property is not liable.

HINDU LAW—Debts.

estate of minor—Test—Charge and simple loan—Distinction.

The guardian of a minor under the Hindu Law has

against him personally or against his estate. It is not the law that the guardian cannot, without charging the estate, contract so as to bind the minor, except it be to pay or keep alive a debt already in existence and binding on the estate. No distinction can be made between a charge and a simple loan in this respect, and the rule laid down in Harumanprasad's case contains the true test for deciding the binding character even of a simple loan incurred by a guardian. The creditor has to make out a necessity not only for the loan advanced but also for the rate of interest charged. Where monies were borrowed by the mother and natural guardian of a minor for purposes binding on the minor, namely for family and panna etc. expenses, and executed a promissory note reciting this purpose, but signed the note without purporting to do so on behalf of the minor.

Held, that the minor's estate was liable for the debt incurred by his mother and guardian under the promissory

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1939 M W N 473=49 L W 635=
A L R 1939 Mad 538=(1939) 1 M L J. 792

Debts—Guardian—Testamentary guardian—Power of borrowing for business entrusted to his care—Liability of minor—Creditor's right of direct recourse—Minor after majority completely and unreservedly discharging former guardian—Effect of

A Hindu by his will appointed one C an executor of his will for distributing and safeguarding his properties, and directed the said executor, after his death, to take possession of all his properties and to manage them. He authorised his wife to take a boy in adoption after his death, and provided that after the adopted boy became a major the executor should deliver to the adopted son all his properties together with the accounts relating thereto. The testator had businesses, some of which were directed to be closed down, but the others were to be continued, managed and improved for the benefit of the son to be adopted. The widow adopted a son, who was a minor at the time.

Held, (1) that on the adoption of a son by the widow of the testator who from that moment became the owner, C's executorship must be held to have ceased and that he thereafter became the testamentary guardian of the son adopted who was a minor at the time, and that he was not liable for the debts of the testator.

estate if circumstances warranted its exercise and he could bind the estate by a personal contract under certain circumstances of necessity or benefit which ordinarily justify an alienation under the Hindu Law would support a contract as well, and the testamentary guardian was therefore competent to borrow moneys for the

HINDU LAW—Debts.

purposes of the business entrusted to his care; (4) that loans contracted by an agent appointed by the testamentary guardian in the customary way in the ordinary

their claims directly against the minor's estate, especially when the guardian has been completely and unreservedly discharged by the ex-minor. (*Pandurang Row and*

Debts—Joint family—Co-partener—Personal debt of—Remedy of creditor—Liability of other co-partners.

Where a co-partener in a joint Hindu family contracts a debt in his personal capacity and dies, the creditor is left without a remedy unless he happens to have already attached his debtor's interest in the joint family property even during his lifetime. There is no liability on the part of the other members to pay that debt. (*Grille, J.*) *BAPUSAHEB v BHAGIRATHISO.*

1939 N L J. 458.

Debts—Joint family—Legal necessity as to loan as well as rate of interest—Burden of proof—Compound rate of interest—When unfair—Adequate security for loan—Presumption as to interest at compound rate being unfair or excessive

In the case of a borrowing for a Hindu joint family where legal necessity has to be proved, the lender must establish not only legal necessity for the loan but also that there was legal necessity for the rate of interest charged or agreed upon. But in the case of a borrower who is *sui juris*, the onus is on the borrower to establish that the bargain into which he has entered was vitiated by fraud, undue influence, coercion and things of a similar character. There is no presumption that because there is ample security for the loan, interest at a compound rate is unjustified until and unless it is shown that the lender was in a position to dominate the borrower's will. (*Harries, C. J. and Lall, J.*) *APURBA KRISHNA*

Debts—Joint family—Liability of members—Extent of

Members of a Hindu joint family are liable for debts incurred for family purposes. The liability, however, in such cases is limited to the extent of the member's share in the joint family property. (*Nawal Kishore, C. J.*) *LADURAN v SHIKARILAL* 1939 M L R. 122 (Civ.).

Debts—Manager—Debt contracted by—Liability of non contracting co-partener

A non contracting co-partener is liable only to the extent of his interest in the joint family property for debt incurred by the manager unless it is proved that the contract sued upon is one to which he could be treated as being a contracting party by reason of his conduct or subsequent ratification. (*Ranjitmal, J.*) *BANSIDHAR v POKARDAS* 1939 M L R. 220 (Civ.).

Debts—Manager—Liability of other co-partners—Nature and extent

Co-partners other than the actual contracting party, are liable only to the extent of their interest in the family property, unless the contract sued upon is in reality one to which they are actual contracting parties or one to which they can be treated as being contracting parties by reason of their conduct or one which they

HINDU LAW—Debts

have subsequently ratified (*Nawal Kishore C J and Ranjitmal, J*) CHANDANMAL v NAWALMAL 1939 M L R 164 (Civ)

—Debts—Manager—Necessity—Presumption—Acknowledgment by other members

There is no presumption that a debt contracted by the Manager of a Hindu family was contracted for the benefit of the family But where such debt has been

—Debts—Money borrowed for binding family purpose—Priority over claims of female members for maintenance and residence—Charges created for maintenance—If can avail against creditor lending money for family purpose

It may be stated as a general proposition that administration of a Hindu's estate binding debts take precedence over mere claims for maintenance residence on the part of the female members of family but there is no authority for holding that

A I R 1939 Bom 403

—Debts—Promissory note by manager—Endorsement—If assignment of debt—Endorsee's right to sue other members on the debt See NEGOTIABLE INSTRUMENTS ACT—PROMISSORY NOTE BY MANAGER OF HINDU JOINT FAMILY 50 L W 797

—Debts—Trading family—Vysya family—Kula chura—Ancestral commission business carried on by

father—the yarn business started cannot be regarded as an ancestral business and the younger brothers cannot therefore be held liable for debts incurred in connection with the same The question of ratification of an elder brother's or manager's transactions by the younger brothers or the other members must be decided w

—Debts—Widow—Money borrowed for own purpose—Binding character of

HINDU LAW—Guardianship

SINGH v LALJI MISSER 5 B R 781= 182 I C 561=12 R P 28=20 P L T 773= A I R 1939 Pat 287

—Family settlement—Partition award—Validity—Portions of family property set apart and given to unmarried sister for maintenance and marriage expenses—Absence of fraud—Ample provision made for discharge of family debts—Validity against creditors

ment in the form of partition the members of Hindu joint the family are not entitled to noperative on the ground that unmarried sisters of the co Parceners are given small portions of family property in discharge of the obligation of the family under the Hindu Law to provide for their maintenance and marriage expenses When there is no suggestion that there was any fraudulent intent or that it had the effect

ity—Decretal debt

pay a debt incurred by his father is not restricted to cases in which the debt is the result of a contractual obligation There is no substantial difference in principle between a case in which a person is under an obligation to repay money which he has actually borrowed and a case in which he is bound to discharge an obligation created by a judgment of a Court (*Nawal Kishore C J and Sukhdeonaram J*) BIJEYKISHAN v MOOLCHAND 1939 M L R 226 (Civ)

other's debts—Son's liability—Father's per is the Hindu Law a son is under a pious obligation

other's debts—Son's liability—Surety debts—

goods he is not bound to pay debts incurred by the father by being surety for the appearance or for the honesty of another Where therefore the father while attesting a surety bond added If surety fails to pay the amount I shall then personally pay the same held that

honesty of the clear and un ay the amount d his son was

liable for the same 26 All 611 1925 Pat 609 Foll (*Nawal Kishore C J and Sukhdeonaram J*) BIJEY KISHAN v MOOLCHAND 1939 M L R 226 (Civ)

—Guardianship—Illegitimate child—Custody—Rights of father

Where a father claims the restoration of his illegitimate child and the alleged mother denies that the child is hers she thereby abjures her responsibility and by the

HINDU LAW—Guardianship.

ordinary tenets of Hindu Law, the person who will be

Guardianship—Paternal grandmother nearest living relation of minor—If lawful guardian.

No member of the family other than the father or the mother has been recognised as having the right of guardianship. So on the death of the parents, neither by Hindu Law nor by custom is the grandmother recognised as the lawful guardian of the minor (*Leach, C.J., Mockett and Krishnarani Aiyangar, JJ*) CHENNAIPA. ONKARAPPA. 50 LW 896=

(1939) 2 M L J 884 (F B).

Guardianship—Right to—Change of religion—Effect of—Jammu and Kashmir.

According to Hindu Law, a change of religion entails

Impartible estate—If can be held by joint Hindu family—Effect of holding—Supersession of Hindu law—Custom—Onus

Even a joint Hindu family may hold an impartible estate and the presumption would then be that the family estate was subject to ordinary Hindu law. The burden of proving that there was a custom superseding Hindu Law lies on the person setting up that custom. (*Hamilton, J.*) JADUNATH SINGH v. BISHESHAR SINGH. 178 IC 950=1938 O W N 1267=

11 E O. 127=1939 O A 2=A I R 1939 Ondh 17.

Impartible estate—Joint property—Alienation in favour of one member—Effect.

No doubt joint property cannot, if governed by a

can the same result be arrived at. Admittedly it can be achieved by surrender or relinquishment. And it would seem that the right of any given person to succeed by survivorship to any given property must depend both upon the person continuing to be a member of the joint family and also upon the property continuing to belong to the family. If the Zamindar has a power of alienation which is not limited by legal necessity nor liable to be controlled by any other member of the family, so that he can squander the property or give or sell it to a stranger, thereby defeating the rights of other members, there would not seem to be great force in the reflection that when he transfers to a member of the family, he is effecting a result similar to that produced by partition

HINDU LAW—Joint family.

69 C L J. 519=41 Bom. L R. 718=180 IC 773=

shara—Possession of private funds given by father—Effect on right against estate—Amount of maintenance—Guide in fixing.

Impartibility arises out of custom, but a custom of impartibility cannot be regarded as in itself destroying the right of the junior members of the family to maintenance out of the family estate while it remains in the family. Illegitimate sons of a Sudra by a continuously and exclusively kept concubine are entitled under the Hindu Law to maintenance out of the estate, if provision has not already been made for them. The fact that provision has been made for the maintenance of their putative father and his legitimate descendants, would not deprive them of the right to maintenance.

Impartible estate—If can be held by joint Hindu family—Effect of holding—Supersession of Hindu law—Custom—Onus

Inheritance—Sister and sister's son—Rights of.

In the absence of collaterals or any other preferential heir of a deceased governed by Hindu Law, a sister and sister's son can inherit his property and save it from being taken by the Crown by way of escheat (*Naval Kishore, C J., Ranjitmal and Sukhdonarain, JJ*) RIKHABDAS v. MST. TIPPO.

1939 M L R. 49 (C) (F B).

Insolvency of father—Son's share—Proceedings to attach or sell—Leave of Insolvency Court—If necessary See PROVINCIAL INSOLVENCY ACT, S 28 (2).

1939 M W N. 367=49 LW. 615.

Joint family.

ACQUISITION OF HOLDING BY A MEMBER.

ALIENATION See HINDU LAW—ALIENATION

—JOINT FAMILY.

BUSINESS.

CO-PARCENER.

DEBTS See HINDU LAW—DEBTS

FATHER

JOINT PROPERTY.

LEGAL NECESSITY See HINDU LAW

(a) ALIENATIONS.

(b) DEBTS

MANAGER.

PARTITION See HINDU LAW—PARTITION.

HINDU LAW—Joint family.

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—Joint family—Business—Ancestral business—
New business—Distinction—Father starting rice mill—
Business stopping before death of father—Major sons
liquidating same after father's death and purchasing
new mill after some years—Mortgage by adult sons for
purchase—If binds minor brothers—If continuation of
old trade

Where there is an existing business carried on by a

HINDU LAW—Joint family.

See PROVINCIAL INSOLVENCY ACT, SS 6, EXPL AND
7 50 L W 857

—Joint family—Business—Division in status—
Continuance of business by manager—Liability of
other members for debts and losses incurred subse-
quent to division in status

Where the manager of a joint family has been
conducting a family business his power to continue the

The question whether a break of continuity does or does
not bestow upon the revived business the character of a
new enterprise started by the adult members in their
individual capacity is substantially one of fact Where
the father starts a rice mill business
customary trade carried on by the
business stops in his lifetime and is
sons after his death, and some yea

held that it is a family business or even that he is doing
it or intends to do it on behalf of the other members of
the family Omission on the part of the other members
to object to his doing business cannot make any

ing to the discretion of the manager

in raising money for that purpose The minor brothers

which is available to him only during the joint status

fact was made by him a joint family business by taking
his sons into the business not as servants, nor as part-
ners but as coparceners, then undoubtedly the properties
acquired from the profits of that business become joint
family property But merely because the father perfor-
med the ordinary duties of a father in that he fed
clothed and educated his sons and set up his grandson in
business it cannot be said that any presumption arises
that he made his contracting business a joint family

partners (Varadachariar and Abdur Rahman, JJ)
RAMACHANDRAPPA v NARAYANAPPA

1939 M W N 927

—Joint family—Business—Manager's claim to
remuneration for managing business—Sustainability

The manager of a joint Hindu family which owns a
business is not ordinarily entitled to any remuneration
for managing the family business either as manager of
the family, or even as managing partner or as a co-

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—Joint family—Business—Partnership between
manager and stranger—Other members if become
partners

HINDU LAW—Joint family.

A contract of partnership between a member of a joint family and a stranger does not make every member of

ner who entered into a contract of partnership for the benefit of the family they will be entitled to call upon him to account for the profits earned by him from the partnership and to share in such profits but this will not place them in any position of direct contractual relationship with the other partners of the firm (*Skimp, J.*) **PRITHI PAL SINGH v HANS RAJ.**

A I.R. 1939 Lab. 378

—Joint family—Business—Partnership by manager with strangers—Dissolution—Suit for accounts by junior co-partners—Maintainability

Though a junior member of a Hindu joint family cannot maintain a suit for dissolution of a partnership in which the managing member of his family partner, where on a dissolution the managing has entered into an arrangement prejudicial to the interests of the family, the junior members are to take steps to protect the interests of their family for the realization of what represents the share of their managing member in the assets of the dissolved partnership. They can maintain a suit not only against their

VARADACHARI

50 L.W. 681—1939 I.T.R. 560

—Joint family—Business—Promissory note in favour of—Suit on—Right to maintain—Right of individual members—Endorsement—If necessary See **NEGOTIABLE INSTRUMENTS ACT, SS 8 AND 9**

41 Bom L.R. 219

—Joint family—Co-partner—Mortgage of undivided share—Suit on decree—Sale in execution—Rights of purchaser—Remedy to work out—Suit for partition and execution proceedings

Where in execution of a mortgage decree against a Hindu coparcener made in a suit on a mortgage executed by the co-partner of his undivided share in the family property, that undivided share is sold and purchased by the decree holder, the remedy of the purchaser to reduce the share to possession is a partition suit, and not proceedings in execution. It is for the auction-purchaser to get the share he has purchased determined and to

—Joint family—Father—Decree against—Attachment of family property in execution—Death of father before sale—Sons and grandsons impleaded as legal representatives—Decree-holder's right to proceed and sell father's share.

Where, in execution of a decree against a Hindu father alone, joint family property is attached and put up for sale, but before the sale, the judgment debtor dies and his sons and grandsons are brought on the record as his legal representatives, it is open to the decree holder notwithstanding the death of the father, to

HINDU LAW—Joint family.

the death, either increase or decrease that share. (*Dhavit and Rowland, J.J.*) **BHUBNESHWAR PRASAD**

—Joint family—Father—Decree against—Son's share—If can be sold.

Where a decree is against a father, it can be executed against the son's share of the family property even though the father is sued in his personal capacity and not either as manager or as representing the family. (*Bose, J.*) **RAMNATH HAJARIMALL v MOHANLAL RADHAKISAN.** 181 I.C. 106=11 R.N. 424=

1939 N.L.J. 21=A.I.R. 1939 Nag. 23.

—Joint family—Father—Division during life time—Effect—Management by senior members—Interference.

Where a father of a joint Hindu family divides the property during his lifetime, which he is entitled to if

Mehta, J.M.) **DIPRAJ v INTERDO SAHU.**

1938 E.D. 948=1939 A.W.R. (B.R.) 47.

—Joint family—Father—Power to make will—Consent of co-partners—Effect on validity.

Under Hindu law, even a father can not dispose of by will his undivided coparcenary interest. The consent of the other co-partners, whether given at the time of its execution or at the time of death, can not make it valid. (*Ram Lal J.*) **SHEO PRASAD v. NATHU RAM.** 41 P.L.R. 607=A.I.R. 1939 Lab. 590.

—Joint family—Insolvency of father—Attachment of son's shares by creditor after appointment of interim receiver—Sale of son's shares by receiver—If affects attaching creditor's rights See **PROVINCIAL INSOLVENCY ACT, SS 20 AND 28 (2).** 1939 M.W.N. 270

—Joint family—Joint property—Acquisition by manager—Presumption as to—Absence of evidence of existence of nucleus—Effect—Mortgage of disputed item along with admitted family property—If raises presumption of joint family property

There is no presumption that an item of property purchased by the manager of a Hindu joint family is joint family property in the absence of evidence that the family possessed property with the income of which the new acquisition might have been made. The fact that

(1939) 2 M.L.J. 757.

—Joint family—Joint property—Properties allotted by manager to co-partners for maintenance—Income from—Acquisitions by co-partners out of—If joint property or separate property

It is perfectly within the competence of the manager of a Hindu joint family to allot to individual members thereof a sufficient portion of the family property, having regard to the status and circumstances, in order to enable them to maintain themselves out of its income. The family still remains joint, and the corpus of various members for maintenance in joint, but the income of the exclusively to the co-partner is at the disposal of the co-

HINDU LAW—Joint family

parcener concerned Savings derived by the co parcener out of the income of the property allotted for his maintenance must be regarded as his own separate property and not joint or partible property (*Mockett and*

—Joint family—Joint property—Property thrown into common stock after partition

Property can be treated as joint property if after the partition it is again thrown into common stock In order to come to the conclusion as to whether it is thrown into common stock, the Court must look to the evidence of actual user (*R C Mitter and Akram, JJ*) **RANADA KISHORE ROY v SWARNAMOYEE DEBI** 44 CWN 114=70 CLJ 355

—Joint family—Manager—If can be called to account—Excluded co parcener—Rights of

As a general rule no co-parcener is entitled to call upon the manager to account the joint family property unless misappropriation or improper parcener who is entirely exclude family property is entitled to ar derived from the family property and to have his share of the income ascertained and paid out to him He is entitled in other words to what are called mesne profits (*Thom C J and Ganga Nath J*) **HIRA LAL v PYARE LAL** 184 IC 833 1939 A WR (HO) 657=

—Joint family—Manager—

tion The manager of a joint Hindu family behalf of the joint family and further it appears from the record that he is the mana joint Hindu family it is not necessary for him to

—Joint family—Manager—Powers of—Contracts for sale of family property—Enforceability

therefore b
Noor, J)

—Joint family—Manager—Powers of—Reference to arbitration—Minors if bound

Mitakshara law, the father as karta (manager) is entitled to the management of the whole co-parcenary property including the minors interest (*Lord Williams J*) **RAJ KUMAR v SHIVA PRASAD GUPTA** 184 IC 563=12 RC 241= A IE 1939 Cal 500

—Joint family—Manager—Power of representation—Suit for accounts of ancestral property in hands of third persons without joining manager as co plaintiff—Right of minor co parcener to maintain

Minor co parceners cannot bring a suit for accounts of the joint ancestral property in the hands of a third

HINDU LAW—Maintenance.

party if their father, the manager, is not joined as co plaintiff but is joined as defendant and supports their claim For, the minor plaintiff cannot give that third person a receipt or quitance on settlement of his accounts and that person be willing to account That only by the manager who alone is entitled accounts and give a quitance or receipt on

It is the manager or karta who is alone competent to represent the family, to act for it and to bind it The device of joining the manager as a defendant does not avoid the difficulty (*Davis, J C and Zyaodis, J*) **KHEMCHAND v MATHRADAS** A IE 1939 Sind 289

—Joint family—Manager—Powers—Settlement of maintenance claims—Family if bound

As the manager of a joint Hindu family has the right to settle maintenance claims, when he does so he acts on behalf of the entire family Hence the whole family is bound by his act (*Stone, C J and Bose, J*) **TRIMBAR v MST BHAGUBAI** 1939 N LJ 409= A IE 1939 Nag 249

—Joint family—Presumption of jointness—Separation—Burden of proof

Generally speaking the normal state of every Hindu

were joint in food worship and estate with their father till his death and continued to be so for some years after the father's death there is a strong presumption that they continued to be joint even subsequently Where it is alleged that they had separated the burden lies heavily on the person alleging so to establish separation (*KAMADAS MATHURA*

693=181 IC 596= A IE 1939 Sind 115

note by Karta for joining—Liability of other members—Form PROMISSORY NOTE—LIABILITY UNDER 180 IC 365=20 Pat LT 321

—Joint family—Sanad—Settlement with a member—Property if self acquired—Holder if trustee (*See SANADI*) 178 IC 950=1938 O WN 1267= A IE 1939 Oudh 17

paration—Effect nsality of a joint Hindu family ontinues until there is positive hat there has been reunion

(*Mentia, M*) **KAMALA AHIR v PHAGU** 1939 A WR (BE) 9=1939 BD 82

—Maintenance—Impartible estates—Illegitimate sons of junior co-parceners—Right to and rate of See HINDU LAW—IMPARTIBLE ESTATE—SUDRAS—ILLEGITIMATE SONS (1939) 1 MLJ 831

—Maintenance—Minor co-parcener and daughter of living co parcener—Suit for maintenance against manager—Maintainability—Proper remedy

A Hindu co parcener cannot ordinarily claim maintenance if he is entitled to claim partition But it cannot be laid down that in no circumstances could a

HINDU LAW—Maintenance

Court give a decree for maintenance against the family properties in favour of a minor co-parcener. A minor co-parcener who has been denied maintenance and wishes to claim maintenance should bring his suit in the alternative claiming partition or maintenance as the Court thinks fit, unless his guardian decides to adopt the usual course of a suit for partition. A daughter during the lifetime of her father cannot be held to be entitled to bring a suit directly against the manager of the joint family for maintenance. The primary responsibility for a daughter's maintenance is upon her father and his properties, both joint and separate. The proper course for a daughter to adopt if, during the time of her father, she has been denied maintenance, is not to bring a suit against the manager of the joint family but to bring a suit against her father claiming maintenance out of his properties, joint and separate, and after getting a decree, to enforce it, if necessary, by the sale of her father's share of the joint.

(*Wadsworth, J.*) *CHERUTTY v. RAVU.*
185 I.C. 26 =

49 L.W. 491 = A.I.R. 1939 Mad 513 =
(1939) 1 M.L.J. 683

—Maintenance—Rate of—Decision of High Court—Interference by Privy Council—Practice.

Where the Indian High Courts have considered the question of maintenance and have arrived at a decision that certain amount is proper as maintenance the Privy Council would be slow to interfere with their decision about such a question. (*Sir George Rankin.*) *RADHA RANI DASSA v. BRINDARANI DASSA*

43 C.W.N. 337 = 179 I.C. 615 = 1939 O.L.R. 83 =
5 B.E. 307 = 1939 O.W.N. 210 =
I.L.R. (1939) Kar 110 (P.C.) =
1939 A.W.E. (P.O.) 29 = 49 L.W. 222 =
1939 M.W.N. 249 = 69 O.L.J. 174 = 11 E.P.C. 140 =
1939 O.A. 309 = 41 Bom L.R. 689 =
1939 A.L.J. 596 = 1939 P.W.N. 123 =
A.I.R. 1939 P.C. 27 = (1939) 1 M.L.J. 245 (P.C.)

—Maintenance—Widow—Amount—Considerations—Extent of stridhanam jewels.

As an ordinary rule, unproductive stridhanam ornaments are not to be taken into account in assessing the maintenance for a Hindu widow. But it is not an invariable rule. The matter is certainly different where she is in possession of costly jewels which she is not likely to wear. (*Pollock, J.*) *KRISHNAJI v. ANUSUYA BAI.*

183 I.C. 689 = 12 R.N. 78 =
1939 N.L.J. 87 = A.I.R. 1939 Nag. 130

—Maintenance—Widow—Arrears—Powers of Court.

In the matter of granting or withholding of arrears the Court has a very large discretion. If it is shown that she was in want at a time when she was entitled maintenance, the Court may give her arrears for the period. (*Pollock, J.*) *KRISHNAJI v. ANUSUYA BAI.*

183 I.C. 689 = 12 R.N. 78 = 1939 N.L.J. 87 =
A.I.R. 1939 Nag. 13

—Maintenance—Widow—Decree based on compromise awarding maintenance—Charge created on specific immovable properties—Option to proceed against other immovable properties—Effect—Right to execute decree against movable properties. See COMPROMISE—CONSENT DECREE—CONSTRUCTION.

41 Bom L.R. 420
—Maintenance—Widow—Default in payment—Right to borrow on reasonable terms—Change in family circumstances—Onus.

A widow would be entitled to the due dates and if she is not paid entitled to borrow on the available.

HINDU LAW—Maintenance.

The family circumstances are peculiarly within the knowledge of the family members and the widow unless made aware of any change in the circumstances is entitled to assume that there is no change and consequently expect her maintenance on the due date. (*Stone, C.J. and Bose, J.*) *TRIMBAK v. MST BHAGUBAI.*

1939 N.L.J. 409 = A.I.R. 1939 Nag. 249.
—Maintenance—Widow—Minor—Residence apart from husband's relations—If affects her right.

In the case of a minor Hindu widow, though her husband's relations as her natural guardians might have a preferential claim to be appointed her guardian, in the absence of any such appointment, the ordinary principle that a Hindu widow is not necessarily to be deprived of her right of separate maintenance merely because she refuses to live with the husband's relations in the family house, would apply. (*Pollock, J.*) *KRISHNAJI v. ANUSUYA BAI.*

183 I.C. 689 = 12 R.N. 78 =
A.I.R. 1939 Nag. 130

—Nature of right—Construction—Variation when justified—How to be effected.

Under the Hindu Law the widow's right to maintenance depends upon the family fortunes and is hence liable to fluctuations. It is open to the parties to agree to pay and to receive a fixed amount irrespective of the family fortunes. But when an agreement mentions an agreed rate and does not say anything more, it only means that parties have agreed as to what is the fair rate under certain circumstances. The parties do not mean to abrogate the rest of the law which permits a variation or even a cessation altogether under certain circumstances. So in such cases an implied term has to be read into the contract, that the agreement is subject to the usual incidents of Hindu Law and is to be read along with it and interpreted in that light. In order to contract themselves out of the law altogether, parties have to say so expressly in their agreement. An alteration in fortune to justify a variation in the amount must be substantial and it must have occurred before the cause of action accrued to the maintenance-holder. An agreement for maintenance must be enforced as it stands and if variation is desired, then the contract itself must be varied in one of the ways known to law before variation can be permitted and such variation in the absence of a contract to the contrary will take effect only in the future and not the past. (*Stone, C.J. and Bose, J.*) *TRIMBAK v. MST BHAGUBAI.*

1939 N.L.J. 409 =
A.I.R. 1939 Nag. 249

—Maintenance—Widow—Rate—Arrears—If to be allowed at same rate as future maintenance.

In the case of maintenance awardable to a Hindu

A.I.R. 1939 Bom 354

—Maintenance—Widow—Rate—Husband bequeathing properties to charities and allowing maintenance at particular rate—Claim by widow for maintenance on basis of income before bequests—Sustainability.

Hindu Law and opinion regard charitable gifts and bequests with favour, and if a Hindu husband of his own free will chooses to diminish his estate by giving course that he is eating his widow's tithe to say that

HINDU LAW—Maintenance.

the income was before the charitable gifts or bequests were made (*Broomfield and Macklin, J.J.*) **MAHANT NARSIDASJI v. BAI JAMNA.** 185 I C 44 = 41 Bom LR 787 = A.I.R.

Maintenance—Widow—Rate of Alteration—Right to in case of change—Award fixing rate permanently and enhancement—Acceptance by widow and maintenance under it—Right to claim on ground of change in circumstances

A contract by a Hindu widow with her husband's co-parceners to receive a fixed sum per annum for maintenance and not to claim any increase in future even in case of change of circumstances, is a valid agreement. This is so even in the case of an award given by arbitrators on a reference as to the rate of maintenance payable to the widow. The fact that the award goes beyond the terms of the reference does not make any difference when the same has been consented to and accepted for many years with full knowledge of the provisions of the award. A party who accepts an award and receives benefit under it is not entitled at a later stage to challenge its validity (*Leach C.J. and Somayya J.*) **KAMESWARAN.**

husband final—

When payment of a partition or conclusion to fix a in the w

the husband as to what would be a reasonable provision for maintenance. If, therefore the Court finds that the provision in the will, is inadequate, it is within the power of the Court to substitute a more reasonable provision. (*Varadachariar and Abdur Rahman J.J.*) **SITHARATHNAMMA v. SESHAMMA**

185 I C 30 = 1939 M.W.N. 640 = 49 L.W. 393 = A.I.R. 1939 Mad 586 = (1939) 1 M.L.J. 456

widow of deceased co-parcener devolves on the persons who take the property of her deceased husband who was an undivided member of the is dependent on the taking of pro

demand for maintenance is made

erty.

The widow of a Hindu cannot residence or of maintenance in derogation on the property. Once the been made, her right of residence and

HINDU LAW—Marriage.

are subordinate to it (*McNair, J.*) **KEDAR NATH v. BAIJNATH.** A.I.R. 1939 Cal 494. *Maintenance—Wife—Assessment of amount.*

with the same degree of comfort and reasonable luxury as she would have in his house for the deprivation of which, not she but her husband and his family were responsible (*M. N. Mukherji and Jack J.J.*) **GAJEN DRA NATH SAHA CHOWDHURI v. SULOCHANA CHAUDHURANI.** 68 C.L.J. 559

Maintenance—Wife—Right of—Wife guilty of adultery and misconduct and living away from husband for long time—Claim to maintenance—Maintainability—Conditions

If a Hindu wife, who has left her husband's home as a result of her own misconduct and adultery, and has voluntarily lived apart from him for a considerable number of years insists on his taking her back into his home for to pay her maintenance on his refusal to do so.

(1939) 2 M.L.J. 294

Maintenance—Wife—Right to arrears

McNair, J.J. and J.J.
SULOCHANA
68 C.L.J. 559.

Relation dissolving

second marriage at new time sought his first wife—Validity of custom

Plaintiff was the second wife of the defendant by condition of this marriage was that

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antiff

could
such a

HINDU LAW—Marriage.

consent is not given is not thereby invalidated. Hence where all the ceremonies necessary under Hindu law to constitute a valid marriage were performed, the fact that the girl was given in marriage when a child without the consent of the paternal uncle and in defiance of an injunction of the Court passed in proceedings pending under the Guardians and Wards Act, would not invalidate the marriage and the doctrine of *factum est* would apply. (*Datta, J. C. and Weston, J.*) **DURGADEVI v KISHENLAL MANIRAM ILR (1939)Kar 684= 192 IC 657=12 RS. 21=AIR 1939 Sind 157.**

—Marriage—Forms of—Presumption of approved form

Under the Hindu Law, the presumption as to the form of a marriage is undoubtedly in favour of the approved and not unapproved form. (*Maclean and Wassoodew, JJ.*) JOTIRAM DALSUKRAM v. BAI DIWALI 181 I.C. 895=11 F.B. 379=

41 Bom L.R. 239=A.I.R. 1939 Bom 154.
—Marriage—Form—Widow's marriage—Taint
of unsupervised form—Applicability.

*Harwood, J. (Obiter).—*There is no authority for holding that the eight recognised forms of marriage apply only to the marriage of a maiden and do not apply to the marriage of a widow. It cannot be held that *natra* or widow's marriage is in a special category of its own or that it does not become *asura* or unapproved on payment of bride price. It is clear that the sacramental idea attending marriage among Hindus would apply with equal force to a widow's marriage. The taint implicit in the unapproved form does not attach so much to the ceremony as to the contract itself, and there is, therefore, no reason for holding that it cannot attach to *natra* or widow's marriage if the

—Marriage—Restitution of conjugal rights—Grant of—Discretion—Principles.

The English law as to the marriage of minors is widely different from the Hindu law, but a decree for the restitution of conjugal rights is an English remedy enforced through Courts based upon the Eastern pattern. It is an equitable remedy and its grant is a matter of judicial discretion. It therefore does not necessarily follow that a declaration, that a marriage is valid, must necessarily be followed by a

(Davis, J. C. and Weston, J.)
 LAL MANIRAM. I

—*Marriage—Validity—Essentials—Virgin bride—Bride pregnant by irregular connection—Bridegroom before marriage—If renders marriage and void.*

There is no rule of Hindu Law essential condition of a valid marriage being that the bride should be a virgin. The holding that a marriage by a Hindu man with a girl who was not a virgin is void. If a Hindu chooses to marry a girl who is not a virgin, he does so at his own risk. A Hindu man who marries a woman who is not a virgin, and who subsequently discovers that she is not a virgin, cannot repudiate the marriage on the ground of lack of virginity of the bride at the time of marriage.

(*Pudsworth, J*) MANDAN SHETTY & TIMMI AVIA
50 L.W. 837=1939 M.W.N. 1198=
(1939) 2 M.L.J. 882

HINDU LAW—Partition

—Partition.

MOTHER'S RIGHT.

MOTHER'S MOVABLES

PRESUMPTION AS TO COMPLETENESS
PROOF.

SEPARATION IN STATUS.

SEPARATION OF ONE MEMBER.

SEVERANCE IN STATUS

SEVERANCE IN STATUS SUIT BY COPARCENER

SUIT BY MINOR.

SUIT BY ONE OF TWO REVERSIONERS.

SUIT FOR—MESNE PROFITS.

SUIT AFTER FATHER'S INSOLVENCY

—Partition between father and sons—Provision for family houses being held by parties as tenants in common—Restraint on alienation by sharer to stranger—Validity. See T P ACT, S 10—SCOPE

——— *Partition—Mother's rights.*

A mother in a joint Hindu family cannot compel a partition so long as the sons remain united. But if a partition takes place between the sons, she is entitled to a share equal to that of a son in the coparcenary property. She is also entitled to a similar share on a partition between the sons and the purchaser of the interest of one or more of them. If the mother has received stridhan from her husband or father-in-law, its value should be deducted from her share. No deduction, however, can be made from the mother's share of property inherited by her from her parents, which is not her stridhan received from her husband or father-in-law (*Lobo, J*)

—Burden of proof—Suppression of books by manager
—Effect of

There can be very little doubt that when there is *prima facie* proof that certain jewels were made or purchased with family funds or there is other proof that they are family jewels, the *onus* will be shifted on to those who deny their divisibility on the ground of their being stridhen, to prove that by reason of gifts as stridhen they have ceased to be part of the family property. The burden of proof will be on the wife of jewels would not joint family per. chooses

and Abdur Rahman JJ) RAMACHANDRAPPA v.
NARAYANAPPA 1939 M W N. 927.

—Partition—Presumption—Most of property found to have been partitioned

If most of the property of a joint family is found to have been partitioned, the initial presumption is that it has been a complete partition. (*Bhide J*) CHANDI BAI v. RATTAN LAL. 41 P.L.R. 392.

—*Partition—Proof of—Absence of direct evidence*
—*Presumption—Cumulative effect of indications.*

Where actual direct evidence as to a partition of a joint Hindu family is not available, but there are indica-

HINDU LAW—Partition

tions such as the entries in revenue papers defining the shares of the members
deceased
to (

IS] cations (*Zia ul Hasan and Bennet JJ*) BHAGWAN BAKHSH SINGH v HANSRAJ KUAR

184 IC 890 = 1939 OLR 681 =

1939 AWR (GC) 258 =

1939 OWN 886 = 1939 OA 793

—Partition—Proof of—Names of co entered in record of rights as having equal Entries held sufficient proof of separation

Where the entries in the record of rights that the names of two widows of two branch recorded in respect of certain properties with a they had equal shares

Held that it was sufficient proof of the separation of the two branches of the family as the entries showed that the two widows were equally interested in the properties (*Fazl Ali and Chatterji JJ*) MT AFTI v MT SUKNI

179 IC 811 = 11 RP 406 =

5 BR 290 = AIR 1939 Pat 23

—Partition—Proof of—Circumstances to be considered

Partition is a severance of joint status. All that is necessary to constitute a partition is a definite and unequivocal indication of his intention by a member to separate himself from the family and to enjoy his share in severalty. It is immaterial in such a case whether the other members assent. Where therefore there is

family effects a severance of the family tie and amounts to a partition. I

on a consideration

circumstances an

J) TIKAMDAS

DAS ILW 1939 Pat 600 184 IC 890 =

11 RS 221 (2) = AIR 1939 Sind 113

—Partition—Separation in status—Gift or renunciation of share in joint property by one coparcener in favour of another—Effect of

A deed of gift or renunciation executed by one coparcener in favour of another or the others cannot

the coparcenary in favour of the rest of the co

in favour of the

property no implicit

intention to separate and when the deed bears ample

evidence that the donor regarded himself as jo

the coparcenary in favour of the rest of the co

in favour of the

property no implicit

intention to separate and when the deed bears ample

evidence that the donor regarded himself as jo

HINDU LAW—Partition

—Partition—Separation of one member—Joint

KUMAR v SHIVA PRASAD GUPTA

184 IC 553 = 12 RC 241 = AIR 1939 Cal 500

—Partition—Separation of one member—Presumption as to the rest

A joint Hindu family is presumed to be joint unless

—Partition—Separation of one member—Status of others—Partition decree directing division of properties into two shares between plaintiffs and defendants—Status of members inter se—Application by guardian ad litem of lunatic member for separation of his share made after preliminary decree dismissed as too late—Lunatic member if remains joint

There is no presumption when one member of a Hindu joint family separates from the others that the latter remain united. The other members of the family may remain joint. But it is a question of their intention which must no doubt be proved. If in a suit for partition by some of the members against the others a decree is passed the decree is no doubt the only evidence of what is decreed. But it is not uncommon for the Court

something to sever the estate title and interest of the

ination. Where in a partition suit filed by some of the members a preliminary decree is passed directing division of the properties into two shares between the plaintiffs and the defendants and an application filed subsequently but before the final decree by one of the members who is *sui juris* for separate allotment of his share is dismissed on the ground that it was filed too

he does

he decree he

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interest or

bounds

—by a proper declaration of his desire to sever is not

abrogated by the mere fact that he has not claimed to

exercise it prior to the preliminary decree. The fact

that the application for separate allotment is made by a

guardian ad litem of a lunatic member and is dismissed

as filed too late does not make any difference when it

HINDU LAW—Partition.

1939 O L R 381 = 5 B R 737 = 50 L W. 75 =
 1939 A L J 463 = 20 Pat L T. 517 = 11 R P.C. 280 =
 1939 O W N 61 = 1939 A W R (P.C.) 113 =
 41 P.L.R. 664 = 70 C L J 171 = 41 Bom L R 210 =
 1939 M W N. 11

—*Partition—Separate continuing joint—Statement joint with all members—E relationship between them*

Where some members of a joint family have become divided from the rest, and some of the rest who continue joint, though divided from the others, describe themselves as joint with all the members on the footing that the family is still a joint family, that is not correct in law as between them on the one hand and the others. But such a statement is useful evidence of the relationship between themselves *inter se*, namely, that they are joint as between themselves. (Sir George Rankin J.)
 CHUNI LAL v. UDAL PRAKASH.

12 B.P.C. 59 = 5 B R. 946 = 43 C W N 1093 =
 1939 O L R 505 = 183 I C 177 =
 70 C L J. 373 = A I R 1939 P C 200

—*Partition—Severance in status—Alienation of share in family property—If separation.*

An alienation by a member of a Hindu joint family of his share in the who in any part thereof was family and make him a the property alienated
 Rahman, JJ) RAMA NARASIMHARAJU.

—*Partition—Severance to set aside alienation for possession of his share effects separation.*

It is now settled law that a Hindu coparcener can become separate in estate by an unambiguous declaration of his intention to separate himself from the family

out being subject to the obligations of the joint status Where a suit in substance is not one for partition but to set aside an alienation by the father or managing member other than the father and foreigner

a Hindu minor by his next friend cannot *ipso facto* constitute a severance of status, it is in the discretion of the Court to grant a decree only if it is for the minor's benefit. But if a decree is passed in that suit granting partition, the severance in status must take effect from the date of the suit and not merely from the date of the decree. The minor plaintiff's share is not therefore liable to decrease by the birth of a member subsequent to the date of the suit but before decree. In other words the minor's suit effects a qualified severance in the sense that it is subject to the decree of the Court

HINDU LAW—Partition.

The minor is capable through his next friend of making up his mind whether there should be a severance of his interest or not when instituting the suit, provided that

A I R 1939 Bom 169

—*Partition—Suit by coparcener—Appointment of Receiver—Manager collecting outstandings and making disbursements—Liability for interest to plaintiff—Principles*

The manager of a Hindu family, as a co-owner is entitled to collect the outstandings due to the family notwithstanding that a suit for partition has been filed by another coparcener and is pending. Till the accounts are taken and the respective rights and liabilities of the parties are ascertained, it cannot be said that he is in the position of a debtor to the plaintiff in the suit or of one

amounts collected the manager made fraudulent entries

however, warrant the award of interest to the plaintiff coparcener. The manager would be liable to pay interest to the coparcener from the date of the final decree in the suit in respect of whatever amounts he plaintiff under
 Rahman, JJ)

1939 M W N 927.

—*Partition—Suit by minor—Competency—Duty of Court*

Where a suit is brought on behalf of a minor

A I R 1933 Sind 113.

—*Partition—Suit by one of two reversioners for partition of estate alienated by widow of last male holder—Other reversioner impleaded as defendant supporting plaintiff and claiming share—Decree—Right of defendant reversioner to decree for his share—Conditions—Payment of court-fee*

A suit was brought by one of two Hindu reversioners for partition of the estate of the last male holder which had in the meanwhile been alienated by his widow to a number of alienees. The other reversioner who was

HINDU LAW—Partition

impleaded as a party defendant to the suit filed a written statement supporting the plaintiff's case and prayed that a decree might be given for his share of the property. The suit ended in a decree in favour of the plaintiff for his share and the other reversioner who

given a decree
and that he

paid the court fee in respect of his share (*Ajng and Abiur Rahman JJ*) NAIESA PADAYACHI v KRIISHNA PADAYACHI I L R (1939) Mad 419 =

184 I C 641 = 1939 M W N 436 =

A I R 1939 Mad 576 = (1939)

—Partition—Suit for—Mesue

awardable—Expenses of maintaining plaintiff's mother as a marriage of plaintiff's sister met by defendant—Right to a decree

defendant in the suit was maintaining the plaintiff's

the amounts expended by the defendant

tenance and marriage (*Madia and*

SANVEERANGOUDE v BASANGOUDE

12 R R 161 = 41 B

A I R 1939 Bom 313

—Partition—Suit for by son after insolvent's death—Remedy of Official Receiver

Where after the death of the insolvent his son has instituted a suit for partition of the property the Official Receiver has two courses open to him in such cases

into a suit at all, as it is stated that to order a appropriate relief therein. Where the Official Receiver is impleaded in the partition suit provision should be made for satisfaction of the personal debts of the insolvent as may be proved to be not tainted with immorality before a final decree is passed. A I R

(1 B), Rel on (*Bhude J*) BIDHI C

ULIAH 182 I C 538 = 12 R L 54 =

A I R

—Partition—Suit for—Property

of parties—If can be excluded

A suit for partition need not include property mortgaged with possession for it is not in the possession of the parties (*Norman, I C S*) NARAIN DAS v SHEOCHARAN 1939 A M L J 12

—Partition—Widow—Right of

A Hindu widow is entitled to maintain a suit for partition against her sharers. All that has reversioners is that the out as not to affect

Akram JJ) RANA

MOYEE DEBI

—Partnership between divided members—Death of one partner—Continuance of firm—Inference Section 106—APPLICABILITY

1939 A W R (H O) 146

—Religious endowment

CHELA

DEDICATION

IDOL

HINDU LAW—Religious endowment

NATURE OF PROPERTY

SHEBAIT

LOAN TO

SUCCESSION

SUIT AGAINST

—Religious endowment—Chela—His rights and duties—Distinction between chela and adopted son

A chela as is well known in India means a disciple. He is different from an adopted son, both in the process of his initiation and in the purpose of his existence. A chela is generally nominated by the ruling mahant

law In the case of the latter it is imperative that one

rites of his
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chela whose

the benefit of his ancestors for in most cases a sanyasin or a mahant when he enters that order abrogates the rights and obligations of a grihastha (householder) whose future felicity in a *post mortem* existence is the object of solicitude on the part of his male descendants (*Mr Jayakar*) KARTAR SINGH v DAYAL DAS

182 I C 753 = 1939 O L R 439 =

1939 O W N 634 = 43 O W N 1037 =

1939 A W R (P C) 106 =

5 B R 868 = 12 R P C 23 = 1939 A L J 809 =

A I R 1939 P C 201 (P C)

—Religious endowment—Dedication—Essentials

—Dedication—Determination—Relevant facts

determined in cases where it is not alleged to be contemporaneous by reference to his subsequent acts and conduct (*Wort Ag C J and Minohar J*) SATWANTI KUER v AMRICA PRASAD SINGH

178 I C 201 = 5 B R 67 = A I R 1939 Pat 45

—Religious endowment—Dedication—Inference—

necessary to signify a dedication (*Bennet and Verma JJ*) KANHAI SINGH v BASDEO SAHAI

1939 A W R (H C) 327 = 1939 A L J 391 =

A I R 1939 All 387

the public had been making offerings for a self without any further

c could have a right to

is No particular act is

used by Hindu public for worship—Owners referring to property as trust and admitting its waqf nature

HINDU LAW—Religious endowment.

A certain property which was called Mandir Shri Ram formerly belonged to the ancestors of the plaintiffs, but the mandir was used by the Hindu public for worship at all times and without hindrance. On various previous occasions plaintiffs and their predecessors had all along described the property as a trust and mandir and had appointed trustees and in various old documents the plaintiffs and their ancestors had referred to the mandir as waqf property and used its income for the repairs of the mandir and had admitted the trust nature of the property.

Held, that the property was dedicated as a public

A.I.R. 1939 Lah. 63.

Religious endowment—Idol—Position of—Duty of people dealing with—Measure of protection that idol is entitled to—Mutawallis treaters idol's brotherly as their own—Execution of mortg capacity to avoid decree for sale nature

The deity or idol is a person under a disability and it is incumbent on persons dealing with the property of a person under a disability to take certain precautions. It is necessary for the Courts to protect the interests of persons under a disability and an idol a juristic person is as much entitled to that protection from the Court as a minor. Where the mutawallis were in possession of certain property dedicated to a deity and were treating it as their own and otherwise asserting title thereto and that property was directed to be sold in execution of a mortgage decree against the deity and where to avoid it

HINDU LAW—Religious endowment.

Religious endowment—Math—Suit on behalf of

in legal possession of that property, the plaintiff in such a suit would have to show some right or title to claim possession. The mere worship of the image does not constitute a Math, nor does it give a person who alleges that he was performing the religious services in a Math and of an idol installed therein, any right to bring such a suit for possession, when as a matter of fact it has not been proved that there ever was any endowed property or any Math or that the plaintiff was in possession of it. (*Bennet and Varma, J.*) **JAGTANAND BAHMACHARI v. BRAHMDEO** 1939 A.L.J. 991= 1939 A.W.R. (H.C.) 854

Religious endowment—Nature of property—Presumption—Property descending from guru to chela.

If certain property is held by a person as his private

182 I.C. 753=1939 O.L.R. 439=

1939 O.W.N. 634=43 C.W.N. 1037=

1939 A.W.R. (P.C.) 106=

5 B.R. 868=12 R.P.C. 23=1939 A.L.J. 809=

A.I.R. 1939 P.C. 201 (P.C.)

Religious endowment—Shebat—Loan to—Duty of lender

If a person wants to bind the deity by any advance of money to the shebat, it is incumbent upon him to make enquiries and satisfy himself as best as he can,

Religious endowment—Idol—Right to sue—Members of public—Idol, if necessary party

In case of a public deity the public undoubtedly have a right of worship but from that it does not necessarily follow that they are the shebats of the deity in the sense that they are the only people to manage the temporal affairs of the deity and look after its worship. Members of the public can bring a suit though not as shebats or as representative of the deity but as worshippers for a declaration that a certain land in suit is a *Devasthan* of the idol and that the Hindu public has acquired by prescription a right to use it as a public place of worship. The deity is not a necessary party to a suit for a declaration of this character. But a declaration of a right to build temples on the land in suit can be given on behalf of the worshippers only in the presence of the deity, as it involves an alteration of the

Religious endowment—Shebat—Succession—Private Devasthan—Management given by decree of Court to brothers by annual turn—Condition of inalienability—Death of one brother leaving no male issue—Daughter's son—Right to management of worship and endowed property

V, M and R three Hindu brothers constituted a joint family. In a suit for partition by R for partition of family properties, including a private devasthan, there was a decree which provided, *inter alia*, that the property endowed to the deity and its management were vested in the family, that the vahuwadars were not competent to alienate it in any way and that the vahuwat should be made by the three brothers by annual turns. M died and after his death his widow was in vahuwat during her husband's turn. She died without male issue, and at the next turn, her daughter's son, the

HINDU LAW—Religious endowment.

Held, further, that the fact that strangers were given the right by the decree to keep supervision over the management by the brothers and to take over the management in case of mismanagement by the brothers, did not give the appellant any right of inheritance as of right to the management of the deity and the endowed property (*Lokur, s*) JIVANRAO v VISHNU RANGNATH. 182 I.C. 488 = 23 E.B. 14 =

—Religious endowment — Shebait—Suit against person as Shebait—If one against idol.

A suit against a person described as a shebait of a named idol is in essence a suit against the idol itself (*Mitter and Sen, JJ*) MANAGER, Dacca Nawab Wards Estate & Ananga Mohan Roy Chowdhury. 43 CWN 1078

———*Reversioner*—If affected by adverse possession as

interest of the reversioners who
estate (*Mehta, S M and Harpe*
DUR SINGH v. RAM HARAKH

—Reversioner—Relationship—Sagotra sapinda—Who is—Sons of prostitute—Descendants of—If can claim sagotra sapindaship.

A person cannot be regarded as a Sagotra sapinda unless he can trace his descent in an unbroken male line from a common male ancestor. In the case of a prostitute who has several sons there can be no presumption that the same man was the father of her sons, when she was not the permanent concubine of a particular person. Consequently the son of one of two brothers born to an unmarried prostitute cannot claim to be the

—Reversioner—Rights and remedies of—Alienation by widow—Suit during widow's lifetime to declare invalid—Injunction to restrain widow from making further alienations—If can be granted *See* COURT

soners in challenging alienations by a widow claim to be the heirs of the last male holder and they cannot be debarred from doing so by the fact that the holder of the fee has died.

of right
S 6
SIONER 1939 A.L.J. 824 (F B)

—Reversioner—Right to sue—Widow in possession
—Cause of action—Waste—Not keeping accounts, if
amounts to—Realisation of funds and reinvestment—
Direction as to, if can be given

HINDU LAW—Stridhan.

It is only when a reversioner can show reasonable grounds for apprehending waste by the widow in possession, that he is entitled to ask the Court to safeguard his interests against possible acts of waste. No presumption of waste can be made either by the fact of the widow realising monies or from an absence of accounts. As such when a reversioner seeks to obtain a direction from the Court that a widow should use only the interest in respect of certain funds realised and that the corpus should be invested in some Bank, he cannot obtain the relief unless waste is proved. (*Thomas, C J and Zia ul Haq*)

—Stridhan—Jewels given at the time of the marriage.

The ornaments given to a woman at the time of her
being put on her person merely
the purpose of the occasion,
(*Pollock, J.*) KRISHNAJI
183 IC 689 = 12 R N. 78 =
9 N L J 87 = A I R 1839 Nag 130.

Stridhan—Maiden's stridhan—Rule of succession under Mitakshara—Step-mother—Right of—Remoter agnate of father and near cognate—Preference

In the case of a maiden governed by the Mitakshara school of Hindu Law the heirs to her stridhan are first her uterine brothers, secondly her mother, and thirdly her father. After the father it devolves on the father's heirs, in the order of succession under the Mitakshara in respect of succession to a male owner dying without issue. After the mother and failing the father, the step mother would succeed as the nearest heir of the father. After the step mother, a remoter agnatic relation or cognatic.

* RAGHAV

9 Pat 636.
Succession—
and father's
ier Mitak-
shara—Hindu Law of Inheritance Amendment Act—
Applicability.

In the case of stridhan of a maiden dying unmarried, the father's sister's son is entitled to succeed to it in

AIR 1939 Bom 194.
~~Stridhan—Succession—Bhartridatta or technical~~

Wassoodew, J. (Oster)—If the woman's marriage was in an unapproved form, the property would descend to

HINDU LAW—Stridhan

41 Bom.L.R. 239 = A.I.R. 1939 Bom. 154

—Stridhan—Succession—Maiden—Step-brother and unmarried sister—Preference.

According to the Hindu law of succession, stridhana of a maiden, would go first to her mother and in her absence to her father and if he is also dead then to her father's heirs in order of propinquity. Where a Hindu maiden dies leaving behind her an unmarried sister and a step brother, so far as her stridhana is concerned,

—Stridhan—Technical stridhan—Intended gift by husband—Whether constitutes.

According to Hindu Law, technical stridhan consists of gifts from relations made at any time and of gifts from strangers made before nuptial fire and at the bridal procession. But in order to make the transfer of property in the articles the gift must be accompanied by delivery. Consequently where the husband expressed his intention to give a certain ornament to his wife,

—Stridhan—Woman married in unapproved form—Succession—Absence of mother, father and father's heirs—Right of husband and his heirs to succeed

On the death of a woman who was married in an unapproved form, in the absence of her mother, father or father's heirs, her stridhan property goes to her husband, who, as her *Sapinda*, must be held entitled to succeed by himself or his heirs. The property does not escheat to the Crown (*Beaumont, C.J. and Sen, J.*)
CHANDULAL ASHAKAM v. BAI KASHI
I.L.R. (1939) Bom. 97 = 179 I.C. 697 = 11 R.B. 258 = 40 Bom.L.R. 1262 = A.I.R. 1939 Bom. 59

—Succession.

ADOPTED SON
BROTHERS

DAUGHTER'S SON

DISQUALIFICATION.

NAISHTIKA BRAHMACHARI

SAPINDASHIP

SISTER

STRIDHANA. See HINDU LAW—STRIDHANA.
SUCCESSION.

—Succession—Adopted son—Right to succeed to abandoned wife of adoptive father.

Where a Hindu husband abandons his wife and even performs certain ceremonial rites to sever his connection with her, and afterwards makes an adoption in which the wife who has been living apart separately does not take any part, the adopted son cannot claim to be the abandoned wife's adopted son, and is not entitled to succeed to the properties of that abandoned wife, which she had inherited from her father (*Abdul Ghani and Nageswara Iyer, J.J.*)
SRINIVASA IVENGAR v. AMRI THAVALLI AMMAL.
17 Mys.L.J. 422 = 44 Mys.F.C.P. 600

—Succession—Brothers—Joint and Preference—Dayabhaga School

The principle of law according to the School is that if a brother dies leaving another brother

HINDU LAW—Succession.

who has been living with him, that would not entitle preference over a separated could be said to have retained (*Rahman, J.J.*)
JYOTISH CHANDRA.
43 C.W.N. 937 = 70 C.L.J. 294.

—Succession—Daughter's son—Right of.

In the presence of daughters, a daughter's son can lay no claim in regard to the property left by his mother's father. (*Abdul Qayoom, C.J. and Wasar, J.*)
GANGA MALI v. KUNGA MALI.
41 P.L.R.J. & K. 77.

—Succession—Disqualification—Deafness and dumbness—If must be both congenital and incurable.

—Succession—Disqualification—Deafness and dumbness—If must be both congenital and incurable.

from inheritance it is not only necessary to prove that the defects of the ear or of the speech were congenital but were also incurable (*Ghose and Mukherjee, J.J.*)
ANUKUL CHANDRA BHATTACHARJEE v. SURENDRA NATH BHATTACHARJEE. I.L.R. (1939) Cal. 592 = 183 I.C. 802 = 12 R.G. 190 = 69 C.L.J. 431 = 43 C.W.N. 745 = A.I.R. 1939 Cal. 451.

—Succession—Disqualification—Son conspiring to kill father and convicted of abetment of offence—Offence not committed in pursuance of conspiracy—Son—If disqualified from succeeding to property of father

Where a Hindu son is found to be guilty of having conspired to kill his father, but the murder of the father though it was committed, was not committed in pursuance of the conspiracy the son though convicted of abetment of murder, is not disqualified from inheriting to the property of the father or from taking a share in the joint family property (*Wadia and Norman, J.J.*)
SANVEERANGOUDE v. BASANGOUDE
184 I.C. 337 = 12 R.B. 161 = 41 Bom.L.R. 561 = A.I.R. 1939 Bom. 313.

—Succession—Naishtika Brahmachari—Succession to—Right of guru or preceptor

The guru or acharya or preceptor of a *Naishtika brahmachari*, is entitled to succeed to the properties left by the latter on his death intestate (*Nageswara Iyer and Singaravelu Mudaliar, J.J.*)
PEERCHAND v. ANANTHA SEITI
44 Mys.H.C.R. 307 = 17 Mys.L.J. 326.

—Succession—Sapindaship—Propinquity and religious efficacy—Determining factor in deciding right to succession

Under the Mitakshara sapinda relationship arises between two people through their being connected by particles of one body, namely, that of a common ancestor in other words from community of blood in contra distinction to the Dayabhaga notion of community in the offering of religious oblations. But the Mitakshara, whilst holding that the right to inherit does not spring from the right to offer oblations, does not exclude from consideration the test of propinquity or nearness of blood. Only in competitions between persons of the same class is the matter determined on the footing of religious efficacy. (*Wort and Agarwala, J.J.*)
KUMAR KAGHAVA SURENDRA SAHI v. RAJPU LACHMI KAUER
18 Pat. 590 = 6 R.B. 117 = A.I.R. 1939 Pat. 636.

—Succession—Sister—Jammu and Kashmir

HINDU LAW—Succession

—*Su cession—Widow—Subsequent unchastity—Devesting of estate*

According to Hindu law an unchaste widow is not entitled to inherit to her husband but once the husband's estate is vested in her it will not be divested by unchastity subsequent to her husband's death (*Ranjitmal and Sukhdevnarain JJ*) **DHOKAL SINGH v KEVAL RAM** 1939 M L R 139 (Civ)

—*Texts—Interpretation—Rule laid down in text—Principles of construction*

According to the accepted canons of interpretation, when any rule or statute takes away some rights or pri-

certain qualities are

A I R 1939 Bom 305 (F B)

—Widow

ACCRETIONS

ADVERSE POSSESSION

ALIENATION See HINDU LAW—ALIENATION

—WIDOW

DIVESTING OF ESTATE

MAINTENANCE See HINDU LAW—MAIN

TENANCE—NATURE OF ESTATE

POWERS

REVERSIONERS—RIGHTS OF See HINDU

LAW—REVERSIONERS

SUIT AGAINST AS ADMINISTRATRIX

SURRENDER

WASTE

—*Widow—Accret revenue sale out of Widow not taking p of old proprietor—If*

Where a widow coming into possession of the properties of her husband, receives the income and does not spend it, but invests it on the purchase of other property, the intention of the widow must be *prima facie* deemed to be to keep the estates of her husband as an entire estate and the property purchased would *prima facie* be intended to be an accretion to the estate. Where there fore a Hindu widow inheriting an estate (Raj) from her husband purchases certain property at a revenue sale, out of the income of the estate, the property purchased becomes part of the Raj estate and possession of the land by the widow is on behalf of the estate and enures to the benefit of the reversioners for the purpose of accretion and if possession of land purch by the widow, the possession of the o not become adverse to the reversioner the widow Limitation begins to run against the rever

possession of property of her husband's uncle to which she is not entitled to succeed under the law acquires a full title or not to such property by adverse possession depends upon the nature of the claim put forward by her

HINDU LAW—Widow

at the time when she took possession of the property in question (i.e.) whether she claimed it in her own right or as a Hindu widow. Where a Hindu widow's name has been entered in mutation proceedings without any contest from any body, the mere fact that in the register the nature of the transfer is stated to be by 'inheritance,' cannot in any way amount to an admission by the

widow has not made any distinction between her husband's property and that of his brother when she obtained possession of them but acquired both for *patwaris* she could not be said to have claimed her husband's brother's property adversely (*Bajpai, J*) **KAULESHWAR v RAM KISHORE**

1939 A W R (H C) 611 = A I R 1939 All 699

—*Widow—Divesting of estate for subsequent unchastity See HINDU LAW—SUCCESSION—WIDOW* 1939 M L R 193 (Civ)

—*Widow—Nature of estate—Possession by widow—If creates absolute title in her—Test*

Mere possession by a Hindu widow of property to which she is not legally entitled is not sufficient to create an absolute title in her. The criterion is her own intention and conduct and the question whether she prescribes

1939 M L R 659 = 1939 J W N 997

—*Widow—Powers of—Compromise giving absolute estate to widow in part of estate of husband—Validity—Suit by remote reversioner against widow—Claim by widow as heir of husband—Compromise allotting property to widow in absolute right—Validity as against ultimate actual reversioner—Principles—Presumption of limited interest*

The Hindu Law does not permit a widow or any other limited owner to convert her limited estate into an absolute one. A surrender by a widow genuinely intended and validly effected in favour of the next rever

an encroachment of her estate. A compromise is no doubt

satisfactory to the widow in not being able to recover her estate or such as is referred to their personal claims in dispute but in relation to the estate. A transaction which ignores the rights of the reversioner and aims at securing a personal benefit to the widow or limited owner is not allowed to prejudice

HINDU LAW—Widow

41 Bom L R 689 = 1939 A L J 596 =
A I R 1939 P C 27 = (1939) 1 M L J 245 (P C)

—Widow—Surrender in favour of daughters—
Liability of daughters for debts due out of the estate

A surrender by a Hindu widow of her husband's
estate in favour of her daughters which amounts to a

SHIDDA CHAUGULA v LAKHMICHAND TULAJARAM
KOTHARI

41 Bom L R 1007 =
A I R 1939 Bom 496

—Widow—Waste—Realisation of funds and not
keeping accounts—Presumption of waste if arises See

HINDU LAW—REVERSIONER—RIGHT TO SUE
1939 O W N 38

—Will—Construction—Bequest to female—Pre-
sumption as to nature of estate—Bequest of property to
wife for life and after her death to daughter—Provi-
sion that thereafter it shall pass to the grandsons
through the daughter—Daughter—If takes absolute
estate or only daughter's estate—Grandsons—If have
vested remainder liable to attachment

It is now settled law that there is no presumption that

sufficient to show that such an absolute ownership was
not intended. The question depends upon the intention
of the testator or settlor to be gathered from the words
used by him and the will or settlement read as a whole
in the light of the surrounding circumstances at or about
the date of the will or settlement. A testator who had

wishes of a Hindu in respect of devolution of property,
(3) that the estate taken by the grandsons was a vested

HINDU LAW—Will

a sum of money for the medical relief of persons of my
community or any other charitable purpose of utility to
my community such object to be named after me. The
question arose whether the words 'my community' used
in the will referred to the Dakshini Brahmin community
in general or the Chitpavan Brahmin Dakshini Brahmins
in particular.

Held that the words used by the testator referred to
the Chitpavan Brahmin (Hindu) community and not to
the Dakshini Brahmin community as a whole (*Hia kwell*,
J) JANARDAN GOVIND v ADVOCATE GENERAL OF
BOMBAY 182 I C 686—12 R B 29 =

41 Bom L R 341 = A I R 1939 Bom 202

—Will—Construction—Bequest to wife by husband
making wife malik or waras and giving her full powers
of alienation—Estate conferred

A Hindu left a will which provided, *inter alia* as
follows of whatever properties that remain after my
death I make my wife B M as *Malik* or *waras* (owner
or heir). So the said B M should after my death take
all my properties in her possession in full and indepen-
dent authority and should out of that perform my
twelve months' death ceremonies and give after death
gifts and dinner as she likes and what remains after
that B M should enjoy or use or sell or mortgage or
give away in gift or by will or do whatever she pleases
with it.

referred an unrestricted and

on the widow she being

the owner of the estate

(J) JOTIRAM DALSUKH

I C 995 11 R B 379 =

41 Bom L R 259 = A I R 1939 Bom 154

—Will—Construction—Provision that estate would
belong to widow after testator's widow and that she will
take the usufruct from the executors and maintain her-
self with it and spent same as she wills—Restriction
on such use of mortgage to no others

conferred upon the widow by the will was not a Hindu
widow's estate, but was only an ordinary life estate

Hindu Law

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HINDU LAW—WILL.

—*Will—Construction—Words "uttaradharicari" and "warrish"—Meaning of.*

The Bengali words "uttaradharicari" and "warrish" have exactly the same meaning and connotation as the English word "heir". In the legal, technical and correct sense of the word, an heir comes into existence only on the death of the ancestor and not before, and no one can, therefore, be the heir of a living person. The word may, however, be sometimes used in a non-technical sense to mean a 'heir presumptive' (*Sen, J.*) GURUDAS ROY CHAUDHURY v. BHUPENDRA NATH GHOSE. 180 I.C. 692 = 11 R.C. 720 = 43 C.W.N. 141 = A.I.R. 1939 Cal. 206

HINDU LAW OF INHERITANCE (AMENDMENT) ACT (II)

of maiden dying after right among heirs of to Act—Permissibility. See HINDU LAW—NIRDHAN

41 Bom.L.R. 287

HINDU WOMEN'S RIGHT TO PROPERTY ACT (XVIII OF 1937)—If a validly passed Act See GOVERNMENT OF INDIA ACT, S. 317 AND SCH. 9—HINDU WOMEN'S RIGHT TO PROPERTY ACT

1939 A.W.R. (H.C.) 655

HINDU WIDOWS' RE-MARRIAGE ACT (XV OF 1856), S. 3—Applicability—Re marriage permitted by custom

The provisions of S. 3 of Act XV of 1856 have no application to a case, where the widow belongs to a caste in which re marriage is permitted. Hence where the widow has married under the Customary law the provisions of S. 3 are inapplicable to her and therefore she does not forfeit her right of guardianship of her children, (*Abdul Rashid, J.*) PREM KAUR v. HARNAM SINGH. 183 I.C. 513 = 12 R.L. 119 = A.I.R. 1939 Lah. 125

HIRE PURCHASE—Owners right to interest—If lost by exercising right to retake possession See CONTRACT—HIRE PURCHASE

41 P.L.R. 365

HUSBAND AND WIFE. See (1) DIVORCE

(2) HINDU LAW—WIFE MAINTENANCE.

(3) MAHOMEDAN LAW

—Restitution of conjugal rights—Decree for—Mode of enforcement. See C. P. CODE O. 21, R. 32

41 P.L.R. J. & K. 80

—*Restitution of conjugal rights—Defence—Cruelty and accusations of immorality—Absence of bona fides in the plaintiff—Relief, if can be given*

Where the relations between the husband and wife were growing unsatisfactory and the wife finally separated from her husband and where the evidence showed that the husband was guilty of physical cruelty and had also made unfounded charge of theft and immorality against his wife, the conduct of the husband constitutes a matrimonial offence of a very objectionable kind which can be successfully pleaded in defence to a suit for restitution of conjugal rights. Where the suit is brought after the wife had obtained an order for maintenance under S. 488 Cr. P.

INCOME-TAX.

In a suit for restitution of conjugal rights, the trial Court should always examine the parties before striking issues. If a plea of cruelty and ill treatment is urged in the written statement an issue should be struck by the Court in regard to it. (*Abdul Qayyum, C.J. and Wazir, J.*) TAJA BIBI v. ALI MAHOMED

41 P.L.R. J. & K. 75.

IMPERIAL BANK OF INDIA ACT (1920) Sch. II, S. 60—Construction—Servant of Bank—Tenure of—Dismissal without notice—If justified

It cannot be held that a servant of the Imperial Bank of India holds his office at pleasure and is liable to be dismissed without notice. Servants even of a statutory body do not hold office at pleasure, merely because the

may over here be dismissed only on reasonable notice (*Newsam, J.*) LAKSHMINARAYANA DEO v. IMPERIAL BANK OF INDIA, GUNTUR. 183 I.C. 896 = 12 R.M. 393 = 49 L.W. 514 = 1939 M.W.N. 380 = A.I.R. 1939 Mad. 580 = (1939) 1 M.L.J. 615.

INCOME TAX—Business—Assessment of taxable income—Deductible expenditure—Capital and revenue expenditure—Distinction—Test to decide—Expenditure for purposes of securing and actually resulting in advantage of enduring nature—If chargeable against profits

When an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, there is very good reason—in the absence of special circumstances leading to the contrary—for treating such an expenditure as properly attributable not to revenue but to capital. If the money is spent for purposes of the trade, and the expenditure would, if successful produce a capital asset or an asset of an enduring character, which is of a capital nature, it is equally a capital expenditure if the expenditure is unsuccessful.

The question whether the expenditure is a capital or a revenue payment is not to be tested by seeing whether it can be shown to be productive. Nor is the fact that what is produced by the expenditure is impalpable or intangible or incalculable any justification for holding that it must be treated as of a revenue nature. And when the payment in fact creates advantages of an enduring nature, it must be properly treated as capital and not as revenue, and therefore it cannot be charged against the profits for purposes of assessment to income-tax (*Lawrence, J.*) COLLINS (INSPECTOR OF TAXES) v. JOSEPH ADAMSON & CO. 1939 I.T.R. 92.

—*Business—Succession to trade—Meaning of—Company carrying on retail trade taking over wholesale trade—Merger of wholesale in retail—Effect—If succession*

Succession to a trade means the taking over of a trade and continuing it as that trade. It does not include the incorporation of a wholesale trade in a retail. There is no succession when the trade carried on by the pre-

incomes—Finance Act, S. 27 (1).

The business of a company incorporated controlled in England consisted in the main

—*Restitution of conjugal rights—Suit for—Striking of issues—Prior examination of parties—Duty of Court.*

INCOME TAX ACT (1922), S 2

money in New Zealand on mortgages and short loans. The greater part of its income arose in New Zealand chiefly from interest on these loans. It owned real property there and had also an investment in New Zealand War Loan (which was exempted from New Zealand Income tax), and preference shares in New Zealand companies and investments in the United Kingdom the income from which was taxed at source in the United Kingdom. The company being controlled in England was taxed to income tax here on the whole of its profits, whether arising from its trade in New Zealand or otherwise. It was also taxed in New Zealand in respect of profits arising there. The company claimed relief under S 27 (1) of the English

(1) payment of or liability to pay United Kingdom income tax for a year of assessment or a part of the year's income, and (ii) payment of dominion tax for that year in respect of the same part of the assessee's income, those parts had to be ascertained by excluding from the statutory incomes in the two countries items which do not satisfy the conditions according to the true construction of the section and it is the smaller of these two incomes in respect of which relief is afforded by S 27 (1) (i) the word 'income' in the section meant not real income but "statutory" or "national income," by means of which tax is calculated, (iii) that an

business, taking care, of course, to see that neither includes income from any other source, (v) that the rules which determine in the United Kingdom or in a Dominion the allowances or deductions which are permissible for the purpose of assessing a tax payer to income tax in either country must be disregarded in

effort—Profits from business—If exempt as agricultural income

The assessee manufactured *burys* which were cigarettes

INCOME TAX ACT (1922), S 2

and preparation, so as to make them fit to be taken to the market, of *tendu* leaves produced by the pruning of the *tendu* shrubs was exempt as agricultural income under S 2 (1) and S 4 (3) (viii) of the Income tax Act (*Derbyshire, C J and Nasim Ali, J*) MOOLJI SICCA & CO *In re* 1939 I T R 493.

—S 2 (4) and 4 (3) (vii)—Applicability—Speculation and adventure in the nature of trade—Distinction—Test—Isolated transaction of purchase and resale resulting in profit—If in the nature of business or casual and non-recurring receipt not arising out of business—Taxability

A mere speculation not in the nature of trade, cannot, by any process of reasoning be regarded as a nature of trade whether a part of purchase of a commodity with a profit is called a speculation or adventure, is of no account the

dividing line between assessability and exemption depends on whether what is done is done in the nature of trade or not. It is erroneous to hold that if an investment is safe and is a lock up investment made without the intention of resale being in the forefront of the investor's mind, then it may be regarded as an accretion of capital and non assessable but that the instant speculation comes in, it is an adventure in the nature of trade. The fact that the assessee employs a business man whether her husband or a stranger to purchase the commodity and later to sell it, falls short of making her an adventurer in trade, when the transaction is an

In order to constitute an isolated nature in the nature of trade merely of a trading nature between the parties, undertaken in order to make the property marketable *ie*, to put it into a saleable state or to attract purchasers, (*Roberts C J Dunkley and Spargo JJ*) SOONIRAM v COMMISSIONER OF INCOME TAX BURMA 1939 Rang L R 757--

184 I C 497=12 E R 149=1939 I T R 470=
A I R 1939 Rang 337.

and 10—Association of merchants trading and promoting interests of members and seeds—Opening of Produce market and clearing house—Charging members—Income from sale of samples—Tastative analysis and penalties levied for of rules—Taxability at profits and

The assessee was an Association registered under S 26 of the Companies Act, known as the Karachi Indian Merchants Association. It had no share capital on which dividend could be declared nor had it any shareholders. Its object was generally to protect and promote trade, commerce and industry of Indians in Karachi and elsewhere, and in particular to advance the business and trading interests of its members. There was a certain mutuality between the

who utilised its services. The

INCOME-TAX ACT (1922), S. 2.

Held, (1) that the activities of the Association in maintaining and working the Road as a business

way of penalty for trading in contravention of regulations did not constitute business which would be taxable Income tax Act or under any other

(3) that whether a surplus or saving was a profit or gain did not depend upon the objects of the Association but upon the origin of the surplus or saving, upon the existence of a common endeavour and a common fund. (*Davis J.C. and Tyagi, J.*) COMMISSIONER OF INCOME TAX, BOMBAY v KARACHI INDIAN MERCHANT ASSOCIATION. 1939 I.T.R. 594.

—Ss 2(4) and 10—"Business"—Assessee owning coffee estate and working same—If carries on "business", See INCOME TAX ACT, S. 4 (1) AND (2)

(1939) 1 M.L.J. 45 (P.C.).

—Ss. 2(4) and 10—"Profits"—Measurement fees realized by Karachi Chamber of Commerce from its members—If profits of business—Taxability.

Before there can be mutuality between an Association and its members, the services must be supplied by the Association to its members as such services for which the members themselves pay from which payments any surplus is saving and not profits or gains. The nature of the services or the purpose of the Association is not

for tennis on payment by the individual club members and a Chamber of Commerce which supplies a measurer of merchandise on payment by its members. Both are employees of the Association provided at the cost of and for the benefit of its members, and if there is a surplus or saving on the year's working, it is not taxable profit or gain. It may be handed back, it may be kept for some future contingency, the test is whether it is the members' money. The members of the Karachi Chamber of Commerce provide for themselves certain facilities in trade such as a measurer of merchandise and pay for these facilities. They combine as a Chamber and provide these facilities for themselves as members of that Chamber and they pay more than is actually necessary for the provision of these services. Hence the measurer's fees and charges realized by the Chamber from its members. They are not profit on trade within the meaning of S. 2(4) and S. 10 Income tax Act.

(4) and S. 10 Income tax Act, fact that the office of public measurer serves not only members of the Chamber but members of the public as well or that the members are incorporated as a Chamber under S. 26, Companies Act, does not destroy the

—Ss
—Loss in

INCOME-TAX ACT (1922), S. 3.

ceasing to be part of British India subsequently—Loss of

British India could not be set-off against the profits from the investments

Held that when the assessee worked the sawmill Burma was part of British India, and reading Ss. 3 and 4 together—the sections should be so read the loss must be deemed to have been sustained in British India, and therefore the set-off claimed ought to be allowed. (*Leach, C.J., Madhavan Nair and Varadachariar, J.J.*) COMMISSIONER OF INCOME TAX, MADRAS v. VALLIAMMAL ACHI. I.L.R. (1939) Mad 388 = 180 I.C. 270 = 11 R.M. 683 = 1939 M.W.N. 112 = 49 L.W. 21 = A.I.R. 1939 Mad 77 = (1939) 1 M.L.J. 31 (F.B.).

—S. 3—"Association of individuals"—Meaning—If includes association of companies—Ahmedabad Mill-owners' Association.

The expression "association of individuals" in S. 3 of the Income tax Act does not include an association of companies. "Individual" must mean a human being, and therefore an association of individuals must mean an association of individuals.

—S. 3 of the Income tax Act and *Wadia, J.*) COMMISSIONER OF INCOME TAX, AHMEDABAD MILL-OWNERS' ASSOCIATION v. THE AHMEDABAD MILL-OWNERS' ASSOCIATION. I.L.R. (1939) Bom 451 = 180 (2) = 1939 I.T.R. 369 = 41 Bom L.R. 656 = A.I.R. 1939 Bom 363.

—Ss 3 and 9 (1)—"Association of individuals"—"Owners"—Meaning of—Wakf property—Mutwalli—If owner—Liability to be taxed in respect of income of wakf property.

A Mahomedan owning several immovable properties executed a deed of wakf in respect of the same appointing himself, his wife and his two sons as *mutwallis*, and conveyed to them the said properties to be held in trust for the purposes declared in the deed of wakf. The *mutwallis* were directed to collect the rents, and, after defraying all charges, to pay $\frac{1}{2}$ of the balance of the income to the settlor's wife for life and the other $\frac{1}{2}$ to the settlor's children. After the death of the wife, her

the income of the wakf properties under S. 9 of the Income tax Act, and assessed the *mutwallis* as the legal owners of the wakf properties.

Held, (1) that though the properties were validly set off to the religious *mutwallis*, the religious *mutwallis* were not the legal owners of the wakf properties, and the income of the wakf properties was assessable in the hands of the *mutwallis* as the legal owners of the wakf properties.

INCOME TAX ACT (1922), S 3.

assessed as regards the income of the *wakf* properties under S 9, (5) that according to law the Income tax authorities were bound to assess so far as the income of the *wakf* properties was concerned, directly the beneficiaries mentioned in the *wakf* deed.

Beaumont, C J—The language of S 9 (1) does seem to involve that the assessee must be the owner of the property from which the income is derived but in order to bring the section into conformity with the scheme of the Act, the words 'of which he is the owner' have to be read as meaning 'of which annual he is the owner'.

the person who is liable (*Beaumont, C J and Rangnekar, J*) COMMISSIONER OF INCOME TAX BOMBAY v ABUBAKER ABDUL KHAN

1 I R (1939) Bom 284—182 I O 712—
12 R B 33—41 Bom LR 232—1939 I T R 139—
AIR 1939 Bom 195

—Ss 3 and 9—*In partible estate under Hindu Mitakshara Law—Income of—If assessable in hands of holder as individual—Owner—Meaning of.*

The income of an impartible estate to which the

1939 I T R 427

—Ss 3 and 4 (3 vii)—*Income—Suit by widow for possession of movable and immovable properties left by her husband—Decree in favour of widow awarding certain movable properties and also damages for wrongful detention of movables—Receipt of sum towards damages—Taxability*

A claimed to be in rightful possession of all the properties as rightful owner. The suit was decreed in favour of the widow the decree awarded certain movable properties to her and also awarded sums as damages for wrongful detention. In the year of assessment the widow received certain amount towards damages awarded by the decree.

Held, that the sum received by the assessee by way of damages was not ar (*Harries C J*), Commissioner of Income Tax v PRAVAKUMARI

—Ss 4 and 24—*Assessee having shares in Company—Liquidation of company and formation of new Company—Agreement by latter to allot shares and debentures to assessee—N in fulfilment—Assessee losing much of originally invested money—Loss—If can be taken into account in assessing income*

The assessee purchased shares to the value of a big amount in a limited company. The company afterwards went into liquidation and out of that liquidation a new company was formed. This company having

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acquired the assets of the old company agreed to allot certain shares and debentures to the assessee, but the agreement was not fulfilled, with the result that the assessee lost a considerable sum of the money of his original investment made in the old company.

Held that the difference between what the assessee has in fact got and what he originally invested was a loss which was clearly a loss of capital and therefore it

purpose of
C J and
ONE TAX,

823—182 I O 841—12 R P 81—
AIR 1939 Pat 107.

me'—Permanent lease of land—
paid by lessee to lessor—Capital or

—Permanent lease the landlord or lessor permanently parts with the direct enjoyment of the property by himself and his successors, and the lessee is the purchaser of a large interest therein. The *salami* or premium paid by the tenant to the landlord which is paid once for all and is not a recurring payment is not 'income' within the meaning of S 4 of the Income tax Act but must be treated as a capital receipt which is not taxable under the Act.

Manohar Lal, J—Though it would be impossible to lay down a hard and fast rule that a *salami* can in a case

—S 4 (1) and (2)—*Foreign income—Coffee grown outside British India—Green coffee cured and then sold in British India—Proceeds retained there—Whether income accruing within British India—Whether exempt from tax*

The assessee was the owner of and worked coffee estates in the Mysore State outside British India, main

brought to the place within British India in their raw state and he had the raw coffee cured for payment within British India where also he sold through his agents and real sold and retained the proceeds. He kept a separate staff in British India for the operations which he conducted there. All the operations connected with the cultivation of the coffee plants and the collection, transport and sale of produce were controlled from

coffee for profit

Held, that the assessee was carrying on a 'business' within the meaning of Ss 2(4) and 10 of the Act inasmuch as the profit which he derived from his land was derived from the business. It was impossible to regard the green coffee itself as income within the meaning of the Act, or arbitrarily to divide into two parts the business operations which must be regarded as a whole.

Held further, that assuming that the assessee's income had accrued without British India and the second

INCOME-TAX ACT (1922), S 4

proviso to S 4 (2) was applicable, the assessee must in any case be held liable to tax under S 4 (1), by reason of the fact that the income was received by him originally, and as income in British India and that no part of the income in question was exempt from taxation by virtue of the second proviso to S 4 (2) of the Act. 69 M.L.J. 474 = I.R. 62 I.A. 215 = 14 Pat. 623 (P.C.) Dist. (Sir George Rankin) COMMISSIONER OF INCOME-TAX, MADRAS : NATHIAS

68 I.A. 23 =

L.R. (1939) Kar. 60 = 11 E.P.O. 123 =

20 P.L.T. 97 = 1939 A.W.R. (P.C.) 8 =

1939 I.T.R. 48 = 41 Bom.L.R. 157 =

1939 M.W.N. 567 = 178 I.C. 906 =

43 C.W.N. 225 = 1939 O.L.R. 1 = 1939 O.W.N. 68 =

68 C.L.J. 581 = 49 L.W. 1 = 5 B.R. 209 =

A.I.R. 1939 P.C. 1 = (1939) 1 M.L.J. 45 (P.C.).

—Ss 4 (1), 42 and 43—“Profits and gains”—“Agent”—Business connection—Non-resident firm acting as managing agent of foreign company and having right to commission on sales at selling agents—Firm opening branch in British India and supplying goods for sale—Commission—Taxability.

It is manifest from the language of S 43 of the

appointed N. B. & Sons of Indore, as their managing agents under a contract of managing agency, whereby the latter were to receive a certain percentage of commission on the net profits and on the gross sale proceeds besides a fixed allowance as the selling agents of the Mili; they had also authority to open branches and appoint and discharge employees. Under this authority they opened a branch at Cawnpore in British India under their control and supplied goods to that which were sold in British India and received commission on the sales so effected. Under the contract managing agency, the commission did not become payable until the annual accounts of the company (the Mills at Indore) had been taken but the claim to the commission was dependent on the ground that their agents under S 43 of the Act and that there was business connection between the two, but the assessee objected.

Held, on reference to the High Court, (1) that though the firm N. B. & Sons were only entitled to receive their commission when the annual accounts of the company were made up, their right to the commission accrued upon the sales effected at Cawnpore, and the commission was therefore in the nature of profits or gains accruing or arising to the non-resident firm N. B. & Sons through or from a business connection in British India within the meaning of S. 42 and must therefore be deemed to be income accruing or arising in British India; (2) that since there was “business connection” between the branch at Cawnpore representing in British India the company at Indore, and the non-

INCOME-TAX ACT (1922), S 4.

—S 4 (2)—Applicability—Receipt of profits by assessee in British India—What amounts to—Loan out of foreign profits to person residing in British India—If receipt of profits in British India.

Income, profits and gains, to fall within S. 4 (2) of the Income tax Act, must be received in or brought in British India by or on behalf of the assessee. Where a hundi is purchased for the assessee in respect of his profits or gains of a foreign business and sent by post to his commission agent at a place in British India, who realises it there and credits it to the account of the foreign shop, it was contended and found that the commission agent wanted a loan from the assessee and that the amount represented the same.

Held, that the commission agent by his agent the post office brought the money represented by the hundi into British India, that he must be deemed to have gone to the assessee's foreign shop and borrowed the money there or as though he had arranged the loan by post and then sent a messenger to bring back the money, and that therefore it was not taxable under S. 4 (2) of the Act. (Smt. C. J. and Bhai, J.) COMMISSIONER OF INCOME TAX, U. P. AND C. P. V. SETH MATHURDAS MOHTA. 1939 I.T.R. 160.

capital and in part as profits—Withdrawal from foreign business and remittance to British India—If taxable as profits

The assessee who were partners in a money lending firm in foreign territory carried on the same kind of business in British India. The foreign firm was compelled to take over in satisfaction of debts due to it

contended that the profits represented by immovable

wals of profits (Leach, C. J., Madhavan Nair and Varadachariar, JJ.) CHIDAMBARAM CHETTIAR v. COMMISSIONER OF INCOME TAX, MADRAS.

I.L.E. (1939) Mad. 480 = 180 I.C. 133 = 11 E.M. 660 = 48 L.W. 957 = A.I.R. 1939 Mad. 78 = (1939) 1 M.L.J. 43 (F.B.).

—S 4 (2)—Scope—Remittance of income from abroad—If remittance of profits—Presumption—Nature of—Remittance from general account before ascertainment of profits—Taxability.

The presumption that where money is remitted from a business abroad where profits have been made the remittance is a remittance out of profits is rebuttable. Where a partner receives moneys from the general account of the firm before profits are ascertained, the

received
accrue
(Leach,
JJ.)
COMMISSIONER OF INCOME TAX, U. P. AND C. P. V. SETH MATHURDAS MOHTA. 1939 I.T.R. 160.

—General object of public

INCOME TAX ACT (1922), S 4

Whether a particular object or purpose is of general public utility so as to be a charitable purpose is not to be decided by what the testator or settlor considered to be beneficial to the public. The Court has a responsibility

TRUSTEES OF THE TRIBUNE *In re*

5 BR 895 = 12 R P C 33 = 1939 P W N 651 =
50 L W 339 = 1939 M W N 967 = 70 C L J 182 =
1939 A L J 861 = 41 Bom L R 1150 =
(1939) I T R 415 = 1939 A W R (P O) 118 =
1939 O W N 678 = 1939 O L R 466 = 182 I C 882 =
43 C W N 1065 = 20 P L T 629 =
A I R 1939 P C 208 = (1939) 2 M L J 444 (P O)

—S 4 (3) (vii)—*Applicability—Purchase by assessee of large area of building site—Sale after several years in small plots to several persons—Profits earned—If taxable—Claim to exemption as casual and non-recurring receipts not arising from business—Sustainability*

The assessee purchased a large area of land in 1915 this a

1934 and 1934 1935 and derived profit by the sales. There was nothing to show that the assessee at the time of the purchases intended to build residential houses, they never applied for sanction to build on the site. The Income tax Authorities came to the conclusion that there was abundant material to show that from the beginning the assessee had the intention of doing real estate business and waited all these years for the price of land to go up and that their waiting had been rewarded by the high price fetched. The assessee's claim to exemption under S 4 (3) Income tax Act was therefore negatived on that the receipts were not of a casual or nature within the meaning of that clause.

Held that the conclusion arrived at was

—S 9—*Scope—Assessee sole surviving co-parcener of Hindu joint family—Income derived from immovable property belonging to him as residuary legatee subject to payment of allowances to widows by way of maintenance—Right to deduct maintenance allowances from income*

Where the whole of the income of an assessee who is

INCOME TAX ACT (1922) S 10

ance allowances, (*Beaumont C J. and Wadia J.*)
COMMISSIONER OF INCOME TAX BOMBAY v D R
NAIK I L R (1939) Bom L R 445 = 184 I C 836 =
41 Bom L R 652 = (1939) I T R 362 =
I T R 1939 Bom 362

—Meaning of
—Liability of
TAX ACT S

—S 10 and R 31—*Applicability—Dividing insurance company—If mutual society—Liability to income tax in respect of business*

The assessee known as the Central Popular Assurance Company Ltd and registered under the Indian Companies Act had a subscribed capital of Rs 3 500 divided into shares of which half had been paid up. The objects of the company, as stated in the Memorandum of Association were (1) to enable its members on the basis of mutual benefit to make provision after death for the families dependents and relatives (2) to obtain help on the occasion of certain ceremonies and (3) to obtain relief in old age or in the event of physical fitness. The company maintained and worked four different funds, and any one wishing to be a subscriber to any of these funds had to pay a small monthly subscription as also an annual subscription of a like amount the sum pay

of the subscriptions received after making certain deductions and adjustments were simply divided out amongst those subscribers (or their heirs) whose claims had matured during that year. The company was not the same body as the policy holders at all. The company and those whose money they collected and in part retained were quite separate and distinct parties. It had directors and shareholders and a nominal share capital quite distinct and separate from the policy holders and their premia.

PRINCIPLE INVOLVED OF APPLICATION (*Walsh J. and Lough J.*)
COMMISSIONER OF INCOME TAX BOMBAY v
CENTRAL POPULAR ASSURANCE CO. LTD.

I L R (1939) Kar 779 = (1939) I T R 293 =
A I R 1939 Sind 293

—S 10 and R 31—*Applicability—Dividing Insurance society—Liability to tax—If mutual benefit*

ly applies to the
society when the

Rules of the com
society the fact that

maintenance allowances are a
the property being declared to
residuary legatee subject to the
ances by way of maintenance

INCOME TAX ACT (1922), S. 10.

Lobo, J. COMMISSIONER OF INCOME TAX, BOMBAY v. INDIAN RELIEF AND BENEFIT INSURANCE CO LTD (1939) I T.R. 341 = A I R 1939 Sind 301.

—Ss 10 and 12—*Applicability—Purchase of decree—Execution of handnote for part of price—Zarpehgi lease for term for balance—Arrangement to wipe off principal and interest within term—Interest on*

the assessee was not entitled to set off against the interest accruing under the decree the interest under the zarpehgi amount which had been taken into

Held, (1) that the case did not come under S 10 of the Income tax Act as the transaction was not in any way connected with the business of the assessee; (2) that the notional payment of interest could not be said to be an expenditure solely for the purpose of making or earning income, under S 12 of the Income-tax Act, as it was solely for the purpose of the decree, (3) that though it may not be purely a question of fact, there was no substantial question of law within the meaning of S. 110, C. P. Code (*H Fort, J.*) DHAKESWAR PRASAD N v. THE COMMISSIONER OF INCOME TAX AND ORISSA.

—Ss 10, 22 (2)—*Assessee carrying on money-lending business and owning immovable property—Advance of money on mortgage of property—Property subsequently purchased by assessee—Assessee selling off property for lesser amount and showing it for first time in subsequent year's account as item of money-lending business—Right to claim a credit for loss.*

The assessee, who was a moneylender and also owned immovable property advanced a sum of Rs 30,000 on a mortgage of certain property. He subsequently purchased the property in satisfaction of the loan and thus became the ostensible owner thereof from the date of the purchase. It stood in his name in the Government and Municipal records and he dealt with it as an owner. In the returns of the income submitted by him under S. 22 (2) for assessment of income tax he

Held that on the facts, the Income-tax Officer was

the loss sustained by the resale of the property many years after its purchase (*Rupchand Bilaram and Ahekar, J.J.*) COMMISSIONER OF INCOME TAX v.

Y. D. 1939—42

INCOME TAX ACT (1922), S. 10.

ABDUL HUSSEIN. 180 I C. 823 = 11 R S 193 = A I R 1939 Sind 61.

—S 10—*Assessee firm partner in another firm—Loss in the bigger partnership—If can be set-off against gains of the assessee firm*

Where the assessee firm entered into a partnership with another firm and in that partnership sustained loss, the loss must be treated as the loss suffered by the

180 I C. 823 = 11 R S 193 = 1939 I T.R. 269 = 1939 A L J 419 = A I R 1939 All 341 (F.B.).

—S 10 and 12—*Assessee having money—another partnership business—to latter—Loss in latter—Mortgage in respect of his share of bad debt deductible in assessment of profits of money lending. See INCOME-TAX ACT, S 66(3).*

1939 I T.R. 149.

—S 10 (2) (iv) proviso (a)—*Claim to depreciation—Duty to give particulars—Effect of failure to give particulars*

Where an assessee claims an allowance in respect of depreciation, he must give the particulars required by proviso (a) to S 10 (2) (iv) of the Income tax Act, if he does not do so, the Income-tax authorities would be

entitled to disallowance (*Leach, J.*) *Aradachariar, J.J.* COMMISSIONER OF INCOME TAX v. (1939) Mad 397 =

101 I C. 34 = 22 A L J 773 = 43 L W 305 = 1939 M W N 155 = (1939) I T.R. 76 = A I R 1939 Mad 357 = (1939) 1 M L J 402.

—Ss 10 (2) (vi) and 26 (2)—*Assessee—Assessment under S 26 (2)—Right of successor in business to depreciation allowance of previous years*

The word "assessee" in S 10 (2) of the Income tax Act, in the case of an assessment under S 26 (2), based on the profits of a predecessor, must refer to such predecessor. The word "assessee" cannot in such a case be interpreted as meaning the person by whom the income-tax assessed is actually payable. The successor is for the purposes of assessment under S 26 (2) to be assumed as his predecessor with respect to the previous year and the profits have to be computed on this assumption. For the purposes of notional assessment

the loss sustained by the assessee for the purpose of running it, for a certain price, and he has to advance various sums of money to the liquidators and to invest capital he

Business in liquidation taken over by assessee—Losses

taken over by the assessee for the purpose of running it, for a certain price, and he has to advance various sums of money to the liquidators and to invest capital he

INCOME TAX ACT (1922) S 10

cannot claim to include the losses incurred in previous

be a part of the consideration for the sale and therefore cannot be taken into account in determining the original cost to him. But sums spent by him making additions to buildings and machinery must be taken into account in calculating the depreciation to which he would be entitled. (*Iqbal Ahmad and Colls* per JJ) KANLAPAT MOTILAL In re

(1939) ITR 374

—S 10 (2) (vi)—Original cost to assessee—Ascertainment—Hindu joint family—Ginning factory—Allotment at partition to one member at stated value higher than that for which it was acquired—Calculation of depreciation value—B Officer—If can go behind deed of partition. A and B who constituted a joint family decided to separate and divide the

fraud found in the bid

Held that the Income tax officer was not precluded

of company arranging with stranger for loan to finance company—Agreement assigning portion of commission

in need of funds. The loan was arranged at a certain rate of interest and on security. The assessee agreed to give and assign to the lender a share of the commission and remuneration which they would be entitled to recover from the company. The company also was a party to the agreement. The assessee claimed to deduct out of their taxable income by way of commission the amount of commission which they agreed to give and assign to the lender who advanced money to the

commission in the account was profits and the amount of commission was given to the lender.

and in such manner—Meaning of—Assessment based solely on local reputation and conditions of business

INCOME TAX ACT (1922) S 13

having operated as an assignment of a share of the income of the assessee. (per of Property Act—no income of the assessee) J) COMMISSIONER AT A SONS LTD. 1939 ITR 195 = 1 I.R. 1939 Bom 283

—Mortgage—Realization subsequently discharging escaped income on cash basis—Legality—Change of system to get over limitation—If justified

If years this interest was assessed annually on the

tax and amount Rs and

13 did not apply to the case at all (2) that the assessee was liable to be taxed under S 34 only such portion of

entries on the account so as S 34 and the

Income tax officer to see is not a system of accounting to be kept by the assessee in respect of a particular loan which

adopts for his account he discloses the account to be open to the accounts

and to proceed in any way they choose by acting under the proviso to S 13, but on exercising a judicial discretion. (*Fazl Ali and Manohar Lal* JJ) COMMISSIONER OF INCOME TAX BIHAR AND ORISSA v JUG SAH MUNI LAL SAH 6 B.R. 101 = 185 I.C. 83 = 1939 ITR 522

—S. 13—Building contractor—Accounts kept on mercantile basis—Profits—Assessment of—Part of amount spent on constructions not realized—Effect

Where the assessee a building contractor has been maintaining accounts on the mercantile system of accounting he is liable to be assessed on the profits shown in the accounts even though a portion of the amount spent by him in making the constructions has not been realized. (*Iqbal Ahmad and Baigsa*, JJ) KRISHNA & CO., In re 1939 ITR 513

—S. 13—Construction and scope—Upon such basis and in such manner—Meaning of—Assessment based solely on local reputation and conditions of business

INCOME-TAX ACT (1922) S. 13.

basis under S 13, and an assessment which is based entirely on local reputation business during the year is to be based on evidence on payment is empowered to act with the provisions of S. 13. (*Sahai Ahmad and Baijai, JJ*) RAM KHELAWAN AND SAHU THAKUR DAS, *In re*. 1939 I T R 607

—Ss 13 and 23—*Relative applicability*
Where no return has been made at all or if a return has been made and the notice given has not been complied with, then S. 23 (4) of the Income tax Act applies and the Income tax Officer has to make the assessment to the best of his judgment. But where there has been a return and the notice has been complied with and it is

proviso to S 13 gives the Income tax Officer as wide if not wider, powers than he is given under S. 23 (4) and it is not unreasonable, because S 23 (4) is intended to cover a case where the assessee does nothing. It positively applies where the assessee positively fails. (*Stone, C J and Bose*) COMMISSIONER OF INCOME TAX, C. P AND U P v BADRIDAS 1939 I T R 613 = 1939 N L J 553

—Ss 13 and 23—*Relative scope—Books of assessee unreliable and rejected—Basis of computation of profits and assessment.*

S 23 of the Income tax Act is concerned with assessment and S 13 with computation. It is not quite correct to say that an assessment should be made under the proviso to S 13 when the assessee's books are unreliable and rejected, though it must, in some circumstances, be in accordance with a computation made under the proviso to S. 13 (*Stone, C J and Bose, JJ*) SHANRAO B DASHMUKH v. COMMISSIONER OF INCOME TAX C P & U P 1939 I T R 515

—Ss 13 and 23 (3)—*Relative scope and effect—Assessee not adopting proper method of accounting—Procedure—Power of Income tax Officer to reject accounts*

All that S. 13 of the Income-tax Act really says is that if the method of accounting employed by the assessee is one which does not properly disclose the

—S 13 of the Income tax Act really says is that if the method of accounting employed by the assessee is one which does not properly disclose the

(*Leask, C.J., Madhavan Nair and Varadachariar, JJ.*) MUTHUKARUPPAN CHETTIAR v. COMMISSIONER OF

INCOME-TAX ACT (1922), S. 23

R (1939) Mad 397 = 4 773 = 43 L W 805 = 55 = (1939) I T R 76 = = (1939) 1 M L J 402.

—S. 13—*Proviso—Assessment under—Money-*

a money lending firm, arrives at an income based upon an ascertainment of the average interest percentage on the whole capital, it cannot be said that it is an arbitrary way, or a mere guess work. Nor is there anything vindictive, capricious or unfair in what the officer has done (*Stone, C J and Bose, JJ*) COMMISSIONER OF INCOME-TAX, C. P AND U P v BADRIDAS 1939 I T R 613 = 1939 N L J 553

—S 13, proviso—*Possibility of deducting income*

Under S. 13 proviso of the Income-tax Act the Income tax officer is the sole judge on the question of whether the income comes from the method of the assessee, and if the method is not objected to, its subject of a reference to the High Court under S 66 (3) of the Act. (*Niyogi, J*) KAMACHANDRA TOLBA TELI v COMMISSIONER OF INCOME-TAX, C P AND U P. 1939 I T R 151.

—S 22 (3)—*Scope and applicability*
S. 22 (3) of the Income-tax Act is intended to enable a person who has made a statement to produce evidence

take (*Stone, C J and Bose, JJ*) COMMISSIONER OF INCOME TAX, C. P AND U P v BADRIDAS 1939 I T R 613 = 1939 N L J 553.

—S 23—*Computation under S 13—Difference. See INCOME TAX ACT, SS. 13 AND 23—RELATIVE APPLICABILITY* 1939 N L J 553.

—S 23 (3)—*Procedure—Assessee's accounts unreliable—Assessee's failure to produce evidence—Duty of Income tax Officer—Power to take evidence and make inquiry—Assessment under S. 23 (4)—Difference*

Under S. 23 (3) of the Income tax Act, if the account is unreliable and the assessee produces evidence to show that he has made a proper assessment, the Income tax Officer must consider it and his judgment. The

—S. 23 (3)—*Scope—Duty of Income tax Officer—If bound to disclose basis of assessment to assessee or*

INCOME TAX ACT (1922) S 23

give him opportunity to show cause—Contents of assessment order

Though there is nothing in the Income tax Act which imposes a duty on the Income tax Officer who makes an assessment under S 23 (3) of the Act to disclose to the assessee the material on which he proposes to act natural justice requires that he should draw the assessee's attention to it.

SUB

MAL

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(1939) 1 M L J 451

—S 23 (3)—Scope—If controlled or modified by S 13 See INCOME TAX ACT SS 13 AND 23 (3)

(1939) I T R 21

—S 24—Assessee—Meaning of

Per *Mukherjee J*—The word assessee used in S 24 in the strict sense of a income tax is payable but means and son against whom assessment proceeds started and who has been asked to give total income during the previous year (*Derbyshire C J Khundkar and Mukherjee*)

K PAUL & CO In re

182 I C 270—12 R C 32 (2)—

A I R 1939 Cal 196 (S B)

—S 24 (1)—Firm of partners doing business in shares—Stock of shares always valued at cost—Dissolution of firm at end of accounting year—Shares allotted to partners at market value prevailing on date of dissolution—Difference if can be claimed as loss

A business firm which is liable to be income tax is under an obligation to maintain

pose of an assessment relating to a particular year A firm of partners doing business in shares—Stock of shares always valued at cost—Dissolution of firm at end of accounting year—Shares allotted to partners at market value prevailing on date of dissolution—Difference if can be claimed as loss

Costello J) CHOUTHMAL, In re

A I R 1939 Cal 559

INCOME TAX ACT (1922) S 26

—S 26—Notice under S 22 (2)—Death of assessee before filing return—Question if assessee was succeeded by another—Power of Income tax Officer to give finding

Per *Mukherjee J*—The process of assessment begins with the service of notice under S 22 (2) and it continues until some order of assessment is made. If there fore after aforesaid notice has been received by the

ed in that capacity by

C J Khundkar and

& CO In re

270—12 R C 32 (2)—

A I R 1939 Cal 196 (S B)

—S 26 A—Application by firm for registration—Inquiry into question whether deed of partnership is real or sham—If open—Power of Income tax authorities to go into

Where certain persons make an application in accord

(1939) 1 I L R 625

—S 26 A—Partnership deed—Registrability—Test

It is true that no partnership can be registered if any partner under the deed is liable to have a variation of his share. But share does not mean net receipts. It is the basis of computation from which after other

the partnership deed is genuine and the shares of each partner (as a basis for computation and not as a

182 I C 278—12 R C 4—1939 I L R 625—

A I R 1939 Rang 178

(2)—Applicability to foreign business—Debt due to firm discharged by payment to or becoming sole owner of firm on dissolution received by partner—Taxability—If fits

the Income tax Act operates not merely liability to pay tax but governs also the process of the tax Assessment in the Act is

senses the process of determining the amount of profit or loss and the process of levying tax but if there is nothing repugnant in the context the

INCOME TAX ACT (1922), S. 26.

word refers to the former. Firm X., carrying on business at Singapore, of which assessee was a partner had

with this amount and the assessee was debited with it in April, 1935. In February, 1936, F firm was dissolved and the assessee became his assessment for 1935—treated this amount as a in Singapore to the asses profits lying in that firm

Held, on a reference by the Commissioner of Income-tax, that as the assessee had succeeded to the business

))) COMMISSIONER OF INCOME TAX, MADRAS v MUTHUKARUPPAN CHETTIAR

I L B (1939) Mad 269 = 181 I O 525 =
11 E M 828 = 49 L W 399 = 1939 M W N 214 =
(1939) I T R 29 = A I R 1939 Mad 376 =
(1939) I M L J 482 (F B)

—Ss 26 (2) and 24—Assessment proceedings started but not completed during financial year—In succeeding year assessee carrying on business succeeded in such capacity by another—Set-off for loss sustained in previous year—If can be claimed by assessee

Where an assessment proceeding for 1933-34 is started but not completed during that year and during its pendency in the next year the assessee hitherto carrying on business is succeeded in such capacity by another person, set-off under S 24 for the loss sustained in that business during the year 1932-1933 can be claimed by the assessee and not by the successor of the assessee. The object of S 26 (2) is to assess the successor on the profits of the business, which he is deemed constructively to carry on during the previous year. The language of the section itself shows that the assessment is based on the assumption that the successor received the entire profits of the previous year. S 26 (2) has therefore no application, when there is loss in the year of accounting in the business in respect to which succession has taken place, and there are no profits for which the successor could be taxed. (*Derbyshire, C J Khuntia and Mukherjee, J J.*) B. K. PAUL & CO., *In re*.

182 I O 270 = 12 E C 32 (2) =
A I R 1939 Cal 196 (F B)

—S 26 (2)—Assessment under—Successor in business—Assessment of—Computation of profits—Right to depreciation of previous years See INCOME-TAX ACT, SS 10 (2) (VI) AND 26 (2)

(1939) I T R 374

—S 26 (2)—“Succession”—Meaning of—Transfer of agency business in motor cars from one firm to another—Transference—Assessment as successor—If justified—Principles.

The fact that the business transferred is an agency

INCOME-TAX ACT (1922), S. 31.

and the matter there ends, there is no question of succession to a business within the meaning of S 26 (2) of the

outstandings, in short, when all that of which a business of the kind can be reasonably said to exist is sold, and

terminated the agency of the transferor and transferred it to the transferee, when there is something more than a

ber at the
entials of a
mere fact
due pay-
there is a
transfer of
a transfer
not in any

way alter the essential nature of the transaction which is the transference of a business of a going concern from one to another, the successor. (*Davis, J C. and Tyabji, J*)

COMMISSIONER OF INCOME TAX, BOMBAY v. NARAIN DAS & CO

(1939) I T R 305 =

A I R 1939 Sind 318

—S 30 (1)—Right of appeal—Denial of liability before Income tax Officer if a pre requisite.

There is nothing in the Income tax Act which makes it incumbent upon the assessee to deny his liability to assessment before the Income tax Officer to invest him with a right of appeal under S 30 of the Act. The words of S 30 (1) are very general and hence every assessee, who has been assessed by the Income tax Officer, has an unqualified right of appeal under S 30 (1), whether he had questioned his liability to assessment under the Act before the Income tax Officer or not. (*Zia-ul Hasan and Radha Krishna, J J*) ANAND KUNWAR v COMMISSIONER OF INCOME TAX.
184 I C 827 = 1939 A W R. (C.C.) 285 =
1939 O L R. 666 = 1939 O W N 1017.

—Ss 33 and 66 (2) and (3)—“Prejudicial order” meaning of—Order remaining adverse to assessee throughout and never altered to his prejudice—If prejudicial—Question of law See INCOME TAX ACT, S 66 (2) AND (3) 1939 I T R 506.

—S 34—Applicability to super-tax

S 34 of the Income-tax Act is applicable to assessments to super-tax, and not merely income tax. (*Beaumont, C J and Wadia, J*) COMMISSIONER OF INCOME TAX, BOMBAY v D R NAIK.

I L R (1939) Bom 445 = (1939) I T R 362 =
184 I C 836 = 41 Bom L R 652 =

A I R 1939 Bom 362.

—Ss 34 and 35—Assessment—When becomes final—Power to correct wrong assessment.

An assessment cannot be said to become final and conclusive until the time limited for altering the assessment under Ss 34 or 35 of the Income tax Act has expired, and until such time an assessment may be corrected in a proper case. (*Beaumont, C J and Wadia, J*) COMMISSIONER OF INCOME TAX, BOMBAY v. D.

I L R (1939) Bom 445 =
(1939) I T R 362 = 184 I C 836 =

41 Bom L R 652 = A I R 1939 Bom 362.

—S 31—Construction—Assessment of escaped income—Notice issued by Income tax Officer—Eng

INCOME TAX ACT (1922), S. 54.

Income tax authorities. (*Varadachariar and Pandrang Rao, J.J.*) VENKATARAMANA v. VARAHALU.

1939 M.W.N. 3028 = 60 L.W. 681 =
1939 I.T.R. 560

—S. 54—Scope and effect of—If confers exemption on Income-tax Officer.

S. 54 of the Income tax Act only lays a prohibition on the Court, it does not confer any exemption on the Income tax Officer who is subject to every process of the Court (*Burn, J.*) VARADARAJAM (HETTY v. KANA-KAYVA).

1939 M.W.N. 377 = 1939 I.T.R. 331 =

A.I.R. 1939 Mad 516 = (1939) 1 M.L.J. 791

—S. 54—Scope and object of—Income tax return—Certified copy of—Admissibility in evidence to prove contents of return. See EVIDENCE ACT, S. 65 (c)

50 L.W. 815.

—S. 58 K—Interpretation—'Without interest'—Meaning of.

The words 'without interest' occurring in S. 58 K of the Income-Tax Act, mean 'without taking into account the interest earned on the fund after it has been transferred to the trustees (*Stone, C. J. and Clarke, J.*) COMMISSIONER OF INCOME TAX C.P. AND U.P. v. CENTRAL INDIA SPINNING, WEAVING AND MANUFACTURING CO., LTD (EMPRESS MILLS)

181 I.C. 399 = 11 R.N. 456 = 1939 I.T.R. 187 =

1939 N.L.J. 18 = A.I.R. 1939 Nag 89

—S. 58 K—Scheme of the Act with reference to employer's deductions—His share' meaning of

It seems to be the scheme of the Act that the employer is to have the advantage of deductions in respect of money which he has contributed to the fund, together with the increase to the fund which his money has earned prior to the time of the transfer of the fund to the trustees. He is not to have any benefit in respect of employee's contributions or interest thereon up to that time and he is not to have the benefit in respect of any interest that is earned by the fund after transfer 'His share' occurring in the S. 58-K cannot be given the meaning of 'his contributions' It can only mean the employer's contributions and interest

date of transfer (*Stone, C. J. and*
COMMISSIONER OF INCOME TAX, C.
CENTRAL INDIA SPINNING, WEAVING
FACTURING CO., LTD (EMPRESS MILLS)

181 I.C. 399 = 11 R.N. 456 = 1939 I.T.R. 187 =

1939 N.L.J. 18 = A.I.R. 1939 Nag 89

—S. 59—Rules made under, R. 25—"Actuarial valuation"—Meaning.

The actuarial valuation referred to in R. 25 of the Rules made by the Board of Revenue under S. 59 of the Income-Tax Act is the actuarial investigation into the company's financial condition required by S. 8(1)

INCOME-TAX ACT (1922), S. 66.

by the last preceding valuation", that is to say, shall be arrived at by taking one fifth of the surplus disclosed in the valuation balance sheet and treating it "as the average annual income of the business for the next quinquennium" The "net profits" in this rule clearly mean the "surplus, if any" in the statutory form of valuation balance sheet of "life assurance and annuity funds (as per balance sheet under Third Schedule)" over the "net liability under life assurance and annuity transaction (as per summary statement provided in Fourth Schedule)". If the assessee's actuarial valuation balance sheet on the last date of the last preceding valuation shows a deficiency, the Income tax Department cannot go behind the said valuation balance sheet to find out if there were any profits in respect of the period of the last preceding valuation. 61 I.A. 41, Foll. (*Lord Romer*.) COMMISSIONER OF INCOME TAX, BENGAL v. HIMALAYAN ASSURANCE CO., LTD. 1939 I.T.R. 402 = 5 B.R. 772 = 43 C.W.N. 926 = 182 I.C. 179 = 50 L.W. 119 = 1939 O.L.R. 411 = 11 E.P.C. 299 = 1939 O.W.N. 669 = 1939 A.W.R. (P.C.) 129 = 41 P.L.R. 724 = 1939 Ins. Cass. 46 = A.I.R. 1939 P.C. 190 (P.C.).

—S. 59 (a) (3)—Construction—Central Board of Revenue—Discretion and powers of.

The words "which in the opinion of the Central Board of Revenue, is unreasonable," in S. 59 (a) (3) of the Income tax Act, gives the Central Board of Revenue absolute discretion to decide in cases coming under Cl. (a) of Sub Sec. (2) of S. 59, whether the amount of trouble to the assessee is unreasonable, and in that case to estimate the income in accordance with rules prescribed. Hence R. 31 of the Income tax Rules is perfectly *intra vires* and not *ultra vires* (*Davis, J.C. and Lobo J.*) COMMISSIONER OF INCOME TAX, BOMBAY v. INDIAN RELIEF AND BENEFIT INSURANCE CO., LTD.

(1939) I.T.R. 352 = A.I.R. 1939 Sind 363.

—S. 66 (2)—Construction—'Prejudicial'—Meaning of.

An order which dismisses an application asking for must be deemed to of S. 66 (2) of the ruled (*Leach, C.J.*) Venkataramana Rao

and Abdul Rahman, J.J.) SREERAMULU CHETTY v. COMMISSIONER OF INCOME-TAX MADRAS

I.L.R. (1939) Mad 358 = 184 I.C. 268 =

12 R.M. 428 = 1939 I.T.R. 263 = 50 L.W. 136 =

1939 M.W.N. 698 = A.I.R. 1939 Mad 709 =

(1939) 2 M.L.J. 68 (S.B.).

—Ss. 66 (2) and (3)—"Prejudicial" order—Meaning of—Order remaining adverse to assessee throughout and never altered to his prejudice—If pre-

43 C.W.N. 926 = A.I.R. 1939 P.C. 190 (P.C.)

—S. 59—Rules made under, R. 25—Assessable income of Life Assurance Company—Mode of determination—Assessee's actuarial valuation balance sheet on last date of last preceding valuation showing deficiency—Power of Income tax Department to go behind it.

Under R. 25 made under S. 59 of the Income Tax Act, "the income, profits and gains of a life assurance business shall be the average annual net profits disclosed

point. The Assistant Commissioner submitted a further report after giving the assessee an opportunity to state his case. The report was again unfavourable to the assessee, and the Commissioner rejected the claim for bad debts without hearing the assessee again.

Held, on a reference under S. 66 (3), that the order of the Assistant Commissioner had remained all the time against the assessee and had never been altered to his prejudice, and therefore there was no order prejudicial

INCOME TAX ACT (1922), S. 66.

—S. 66 (3)—Costs—Application to direct Commissioner to state a case—Costs of—Rule as to

The right rule as to costs of an application under S. 66 (3) of the Income tax Act, asking the Court to direct the Commissioner of Income tax to state a case, is that costs should follow the decision upon the point of law, the Commissioner, can have no view whether there was a point of law should have been stated. In the circumstances, the costs of such an application follow the event. (*Beaumont CENTRAL TALKIES CIRCUIT INCOME TAX, BOMBAY. I.L. 1939 ITR 62*)

—S. 66 (3)—Question of S. 26-A—Refusal on finding that it was not intended to be acted upon—Interference

view to wise. (*Grille, INCOME*)

—S. 66 (3)—Question of law—Assessee advancing money from money lending business to partnership—Loss in latter—Debt due by partner to assessee for share of loss of capital—Non recovery—Claim to deduct same as bad debt in money-lending—Rejection—If point of law.

money lending business to carry on for that business of the money to

a mortgage bond from his partner for share of the loss, but realises only the amount to due from his partner, the balance of

—S. 66 (3)—Question of law—As return of income based on accounts found and false—Assessment under S. 23 (3) with Ss. 13 and 10—Question of law—If

Where it is clearly found that the making the return of income for purposes based on previous false basis and the materials of the return itself are such that the income cannot be properly deduced therefrom, it is the duty of the Income-tax Officer to make a computation of the income in accord-

INCOME TAX ACT (1922), S. 66-A.

ance with the provisions of the Income-tax Act. He has to make an assessment under S. 23 (3) of the Act, and in so doing he has to be guided in particular by Ss. 13 and 10 of the Act. If the account books which the assessee files and which are considered by the Income-

tion for reference—Competency. Where the assessee's account books are found to be

and no question of to the High Court. (*IRAO B. DESHMUKH AX, C. P. AND U. P. 1939 ITR 515.*)

—S. 66 (3)—Question of law—Assessment at flat rate—Question of rate for calculating profits—If one of law or fact.

Where an assessment is made at a flat rate the question as to what is the rate at which the profits should have been calculated is essentially a question of fact. (*Iqbal Ahmad and Bapoor, JJ.*) *KRISHNA & CO., 1939 ITR 513.*

—S. 66 (3)—Question of law—Reasonableness of assessment—Assessee has not objected under S. 13—PROVISO 1939 ITR 151

—S. 66-A (2)—Application under S. 66 (3) on

grant a certificate of appeal under S. 66-A (2) of the Income-tax Act, (2) that an appeal did not lie under Cl. 39 of the Letters Patent from a decision of the High Court upon a case stated and referred to the

INCOME TAX RULES R 31

under the Act since the decision was merely advisory and therefore was not a final judgment decree or order with n the meaning of the clause (3) that the direction given to the Commissioner to state a case being an interlocutory order in a matter in which the Court was required to act in an advisory capacity and the refer

SREERAMULU CHETTY I.L.R. (1939) Mad 770—
1939 I.T.R. 566=50 L.W. 580=
A.I.R. 1939 Mad 903=(1939) 2 M.L.J. 667 (F.B.)

INCOME TAX RULES R 31—Applicability—
Dividing Society Business—Company doing Insurance
Business including Dividing Society Business—Status
and Liability of—If Mutual Benefit Society

Where the very Memorandum of Association of a company states that one of the objects of the business is to carry on Insurance Business of all kinds including Dividing Society Business there is no force in the contention that it is a mutual benefit society and as such exempt from tax. When the Company and its capital and its shareholders are things distinct and apart from the members of the society or policy holders and the premia and premium income and when the rules of the company show that the amount payable on the policies issued by it is not fixed but depends on the total contributions of the year and the number of claims that

INDIAN (FOREIGN JURISDICTION) ORDER IN COUNCIL (1902)

words Dividing Society in R 31 means and must be read as Dividing Insurance Society. It is also obvious from a reading of R 32 that companies referred to in R 31 mean Life Assurance Companies (*Davis J.C. and Lobo J.*) COMMISSIONER OF INCOME TAX, BOMBAY v. CENTRAL POPULAR ASSURANCE CO. LTD. I.L.R. (1939) Kar 779=

1939 I.T.R. 283=A.I.R. 1939 Sind 293
—R 31—Scope—If ultra vires

R 31 of the Income tax Rules is not *ultra vires* (*Davis J.C. and Lobo J.*) COMMISSIONER OF INCOME TAX BOMBAY v. INDIAN RELIEF AND BENEFIT INSURANCE CO. LTD. **1939 I.T.R. 352=**
A.I.R. 1939 Sind 363

INDEMNITY See also CONTRACT ACT Ss 124 TO 133

—Money lent to executrix for taking out probate—Creditor's right to charge against estate—Rights of indemnity. See SUCCESSION ACT S 321

(1939) 2 M.L.J. 316
INDIA AND BURMA (TRANSITORY PROVISIONS) ORDER 1937 Para 8 (2)—Scope—
 Appointment of Inspector under Companies Act by Provincial Government—Legalty. See COMPANIES ACT S 140 (3). **49 L.W. 651**

INDIAN AND COLONIAL DIVORCE JURISDICTION ACT (1926)—Divorce—Application by husband—Desertion—What amounts to—Refusal by wife to live in husband's country of employment—

AND BENEFIT INSURANCE CO. LTD.

1939 I.T.R. 352=A.I.R. 1939 Sind 363
—R 31—Applicability—Dividing Society Business

contingency insured against is not fixed but depends either partly or wholly on the results of the division of any portion of the premium income or funds among the policies which have become due for payment in proportion to the premia received under each class in the specified period carries on a dividing society business within the meaning of R 31 of the Income tax Rules

during the periods in which they may be in the same country she ceases to be his wife in any proper sense and her conduct amounts to desertion and the

—S 1 provides (a) and (c)—Decree of dissolution on ground of cruelty—Power of High Court to grant—Supreme Court of Judicature (Consolidation) Act S 176

S 1 of the Indian and Colonial Divorce Jurisdiction Act 1926 together with proviso (a) thereto has the effect of conferring upon a Chartered High Court the

ly made
 S 59 (2)
 companies
 that the

INDIAN (FOREIGN JURISDICTION) ORDER IN COUNCIL (1902)—Notification by Governor General dated 28—2—1912 and 14—1—1937—Scope—If ultra vires—Warrant of arrest against native of Dhenkanal by District Magistrate of that State—Arrest

INDIAN (FOREIGN JURISDICTION) ORDER IN COUNCIL (1902).

by Railway Police at Dhenkanal Garh Railway Station and production before Magistrate in Cuttack—Detention by latter sending arrangements by State—Legality—*Cr. P. Code, S. 54 (1)*.

Neither the notification dated 14th January, 1937, nor the one dated 28th March, 1912, issued under the Indian (Foreign Jurisdiction) Order in Council, 1902, is *ultra vires*. Both of them are *intra vires* the order of 1902. The Railway Police at Dhenkanal Garh Railway Station are bound, under the terms of these notifications, to execute a warrant of arrest issued by the District Magistrate of Dhenkanal State in precisely the same manner as if it has been issued by the District Magistrate of Cuttack who, by the notification of 28th March, 1912, has sole jurisdiction over railway lands in the State of Dhenkanal.

Further to justify an arrest under the 7th S. 54 (1), there must be in existence as a fact to any belief which may be entertained a warrant issued under the Extradition Act. (*Harris v. C. J. and Agarwala, J.*) HARMOHAN PATI EMPEROR 19 Pat L T 909=1938 P.W. INJUNCTION See (1) C. P. CODE, O 39, (2) CR. P. CODE (3) SPECIFIC RELIEF ACT CH. IX

Application not maintainable under C O. 39, R. 1—Inherent jurisdiction of High Court grant injunctions apart from O 39, R 1 of C. P. Code. See C. P. CODE, O 39, R 1 A.I.R. 1939 Cal 642 Damages when not a proper remedy—Interference with religious procession

Though damages may be given in substitution for an injunction where either the injury is small or capable of being estimated in money or can be compensated by a small payment or where the injunction would be oppressive to the other party in a case where the right to carry

MUNICIPAL BOARD, AMROHA I.L.R. (1939) All 237=181 I.C. 964=11 R.A. 636=1939 A.W.R. (H.C.) 131=1939 A.L.J. 19= A.I.R. 1939 All. 280

Grant—Conditions—Certificate sale—Certificate and dakhil dahan issued to purchaser—Dakhil dahan effected and possession delivered—Injunction to restrain

INSOLVENCY.

to the purchaser. A temporary injunction issued under such circumstances is liable to be set aside. (*Dhale, J.*) RA

—C creditor to restrain another creditor of same debtor from seeking to attach property of debtor already attached by former—Competency. See SPECIFIC RELIEF ACT, S 42 41 Bom L.R. 384.

—Grant of—Grounds—Land owned by Mahomedans—Building of mosque and use as such—Objection to same by Hindus owning place of worship near by—Injunction restraining use of building as mosque—Legality of.

People of any sect are at liberty to erect on their own

the latter, and that acute feeling will be aroused if the building is used as a mosque are not grounds which the law can recognise for the granting of an injunction at the instance of the Hindus to restrain

others, but the erection of a mosque on land owned by

city. The Rules framed under S. 52 by the local Government must be interpreted with reference to local conditions and in a natural manner Art. 21 can have no application where the river is so wide that the two flotillas coming from opposite directions can safely pass on either side of it without risk of collision. When the

AS DEFENCE See PENAL CODE,

INSOLVENCY See also (1) PRESIDENCY TOWNS INSOLVENCY ACT. (2) PROVINCIAL INSOLVENCY ACT.

—Adjudication—Procedure—Adjudication by consent of parties—Permissibility An adjudication of a debtor as insolvent cannot be

INSOLVENCY.

—Adjudication in respect of debt for which debtor

INSOLVENCY

—Purchaser from receiver of crops—Distraint by zamindar for non payment of rent—Suit for refund of

50 L W 581

judicated only with reference to the terms of the sale deed as to the liability for payment of rent to zamindar

KAUSHAL PAL SINGH v JWALA BANK,
1939 A W E (H C) 289=

1939 A L J 477=A I R 1939 All 482

—withdrawal of petition—Court if should allow

debtor should always

Official Assignee

—One of the beneficiaries of a fund became insolvent

also ought to be taken into consideration in deciding the matter Where the creditors had been dragged into the

paid to the insolvent by the trustee

Held, that the trustee should be directed to refund the money to the Official Receiver (Roberts C J and Mackney J) E M JOSEPH v OFFICIAL ASSIGNEE

A I R 1939 Rang 401

—Composition scheme—Construction—One of secured creditors to be paid last but to be paid interest in meantime—Certain amount fixed in scheme as approximately due to him—Such amount admittedly including arrears of interest—Interest if to be

—Avoidance of contract—Wilful suppression of material facts by assured—Right of assured to avoid contract See CONTRACT—INSURANCE

A I R 1939 Sind 254

—Fire insurance—Insurable interest—Warehouseman assuming obligation to insure goods in his possession

A warehouseman who has assumed the obligation to insure the goods while in his possession has an insurable interest because he will be bound to answer in damages to the bailer if he has not insured and the goods have been destroyed or damaged though apart from the special contract the warehouseman would not be responsible in respect of goods accidentally destroyed or damaged by fire while in his warehouse (Lord Wright) T THOMAS MAURICE v GOLDSBROUGH MORT & CO

1939 A C 452=183 I C 106=

12 R P C 42=A I R 1939 P C 195 (P C)

—Fire insurance—Right of insured—Insurance

mentioned as approximately due a question of construction of the under the scheme of composition

Held that the scheme recorded the acceptance by the Bank of a new mode of payment of their secured debt which was clearly fixed by the schedule at

least an insurance described as an insurance on goods does not cover profits Where a broker in his own name has insured merchandise belonging to his client

an insurable a special profit or some other of loss of the cover expected destroyed the loss which he had not been S MAURICE v

—Insolvency Court—Review—Power of Judge to upset orders of predecessor and

—Insurance company admitting age after getting of age—Effect—Right of company to dispute age afterwards—Fraud—Burden of

INSOLVENCY.

Once the age given by an assured in his proposal and application for a policy of life assurance is admitted by the Insurance Company, the latter should be held to be precluded from disputing the correctness thereof unless the admission was procured by fraud. Where the age is not admitted, the burden of proving the age is initially on the assured or the person claiming the amount under the policy of insurance; but where the age is admitted, then it is for the Insurance Company to prove that the admission was procured by fraud and the representation as to age is untrue. If age as admitted in writing by the company after being satisfied with the proof furnished by the assured, not only would the person claiming under the policy be relieved from the necessity of proving the age in an action brought on the policy, but the company also would be precluded from producing, as of right, evidence to disprove the age as admitted. If, however, the Court is satisfied that the admission has been obtained by fraud or that there is other good and sufficient cause, it will be in the discretion of Court to require proof otherwise than by such admission. It is a serious thing to impute fraud to a person who is rich and in good position, and the Court

—Life Insurance Policy—Assignment by assured to wife—Provision for reverter to assured in case of assignee predeceasing assured or assured being alive at time of maturity of policy—Effect of—If present transfer—Death of assured—Amount of Policy—Right to—If assets of deceased assured

The assured under an endowment policy of life

policy from time to time) to my
however, that in the event of my
or in the event of my surviving
said policy..... would mature, it
and the right to receive money

Held, that the money was not
by the deceased, because the assignment operated as a
present transfer in favour of the assignee with a provision
for reverter to the assignor in certain contingencies.
It was therefore not a mere mandate to transfer nor a

question whether there was an absolute transfer or not
within the meaning of S 130, T P. Act, did not arise.

AIR 1939 Mad 411—(1939) 1 M L J 401.
INSURANCE ACT (IV of 1938), S 38 (7)—
Assignment—Mahomedan law of gift, if applies.

INTEREST.

Though an assignment by a Mahomedan husband in favour of his wife be construed as a contingent gift it

INTEREST.

- See also (1) C P CODE, S. 34, O 34, Rr. 2 TO 7.
(2) CONTRACT ACT, S. 73
(3) DAMAGES.
(4) DAMDUPAT.
(5) MADRAS AGRICULTURISTS' RELIEF ACT.
(6) USURIOUS LOANS ACT.

—Agreement as to—Making up of accounts—Interest on whole sum due on that date—If can be agreed to.

It is only the rule of damdupat that cannot be avoided by an agreement that interest shall be treated as principal. But subject to that, there is nothing to prevent parties contracting when the accounts are made up that interest shall run on the whole sum then due and not on the original principal (*Norman, I C S*)

—NHAIVA LAL v CHUNNI LAL

1939 A M L J. 29.

—Award of—Claim for contribution—Power of
art to award interest See CONTRIBUTION—CLAIM
49 L W. 132.

—Compound interest—When allowed

Compound interest cannot be allowed unless there is an agreement, express or implied to pay between the parties. The burden of proving such an agreement is on the plaintiff (*Nazul Kishore, C J., and Ranjimal, J.*) *VIRDICHAND v POONAMCHAND.*

1939 M L R 115 (Civ.).

cretion of Court—Customary rate—Compound at 2 per cent.—Reduction to 1½ per cent.
if justified.

the customary rate of interest which was

—If passes on assignment of a debt. See T. P. ACT, S 130—DEBT—ASSIGNMENT OF
1939 M W.N. 1054.

12 per cent.—If

and fast rule as to
compound interest is
unfair. Each case

depends upon its own facts and circumstances. Though in some cases Courts allow simple rate of interest, in other cases they allow compound rate of interest, at

unusual or

es (*Harries*)
SUBAHAND

1 E.P. 617=

W N. 231=

AIR 1939 Pat. 552.

—Rate of—Loan on handnote—18 per cent. per annum compoundable yearly—If excessive or unfair.

INTEREST

It has always been recognized that the lender of money upon a note of hand is entitled to a greater rate of interest than the lender of money on security. Further the lender of money to a person whose chances of repayment are slight is obviously entitled to demand a higher rate of interest than if he was lending to a person who was obviously in a position to pay whenever called upon so to do. In such circumstances the lender is entitled to demand a substantial rate of interest to compensate him for the risk he is running. The rate of interest of 18 per cent per annum compoundable yearly cannot be said to be unfair or excessive in such a case. (*Harries C J and Manohar Lal, J*) *Srinagar Dist. Bd. v. P. D. Chaudhary* 182 IC 450=1

—Rate of—Reasonable & varying circumstances

A rate of 12% per annum may be taken to a fair rate. It is higher rate to show that there were circumstances justifying such higher rate. Such circumstances are for example that the security offered was of doubtful value.

—Rate of—What is reasonable for note

The rate of 24 per cent per annum is some special cause for a promissory note in the absence of any special cause it was reduced to 12 per cent per annum in the particular case. (*Verma J J*) *Kamla Prasad Ram v. Hasan Ali Khan* 181 IC 149=12 RA 181=1939 AWR (HC) 171 1939 ALJ 196=

AIR 1939 All 308

—Right to—Wages outstanding

Interest on the outstanding amount of wages cannot be allowed unless there is distinct stipulation for the same. (*Nawal Kishore C J*) *LAL*

INTEREST ACT (XXXII)

Right to interest—Inam grant—collect land revenue—Right to non payment within the year or Non payment—Interest—Claim

Where there is no date fixed in the document evidencing the claim can be awarded in the absence given to the person liable to interest would be claimed in the

the end of the year he is not entitled to interest unless he gives notice under the Interest Act. (*Leach C J and Patanjali Sastri, J*) *MAHOMED JIFFIRI ATTA ROYA v. AVIDROSO KUNHIKOVA* 50 LW 466=1939 MWN 1185=AIR 1939 Mad 877=(1939) 2 MLJ 579

INTERNATIONAL LAW—Decision by Court affecting status of person domiciled within jurisdiction—Binding character in respect of succession to immovable property situate in foreign country—Principles. See EVIDENCE ACT S 41 1939 MWN 180

—Public ship of one nation in territorial waters of another nation—Offence by member of crew against

INTERPRETATION OF STATUTES

another member—Jurisdiction of local Courts to try—Consent—Waiver—Principles applicable

A public ship of a nation in foreign waters is not and is not treated as territory of her own nation. The domestic Courts in accordance with principles of international law will accord to the ship and its crew and its contents certain immunities. Such immunities do not depend upon an objective ex territoriality, but on implication of domestic law. They are conditional and can in any case be waived by the nation owning the ship. So far as at any rate as the Courts of England are concerned, International Law has no validity save in so far as its principles are accepted and adopted by the domestic

as incorporated into the domestic law so far as it is not inconsistent with rules enacted by statutes or finally declared by their tribunals. When in foreign waters private vessels are subject to the territorial jurisdiction. But a public armed ship constitutes a part of the military force of the nation, acts under the immediate and direct command of the sovereign is employed by him in

assault another on board it would be universally agreed that local Courts would not seek to exercise jurisdiction and would decline it unless indeed they were invited to exercise it by competent authority of the flag nation. In accordance with the conventions of International Law the territorial sovereign grants to foreign

180 IC 20=1939 MWN 233=1939 PWN 286=AIR 1939 PC 69(PC)

INTERPRETATION OF STATUTES

Bye laws
Commencement of Act
Constitution Act
Duty of Court
Fiscal Acts
Forfeiture clause
General principle
General and specific words
Harmonious construction

INTERPRETATION OF STATUTES.

- Headings.
- Incometax Act—English decisions
- Intention of legislature
- Jurisdiction—Ouster of.
- Language not clear
- Meaning of words.
- Objects and reasons.
- Penal Act
- Permissive provision.
- Plain meaning
- Power conferred by a statute.
- Proposals for legislation.
- Repugnancy
- Retrospective oper:
- Similar Acts
- Special tribunals.
- Words judicially
- in same form

—Bye-laws—Validity of—Essentials.
Per *Mohammad Ismail, J.*—There are certain essentials for the validity of a bye-law. It must be: (1) *intra vires* of the authority who makes it,

INTERPRETATION OF STATUTES.

to justify it as being within the class of subjects described in the Constitution Act as "direct taxation within the Province in order to the raising of a revenue for provincial purposes," because under the guise of discriminatory taxation in the Province it would be easy not only to impair, but even to render wholly nugatory the exclusive legislative authority of the Dominion over a number of the classes of subjects specially mentioned by making them valueless. Provincial Legislation of such character cannot be held to be valid. Whether a Provincial Act, which indirectly interferes in some degree with one of the powers of the Dominion, is or is not *ultra vires*

treated as covered by any of those in the other list. It is therefore necessary to compare the two complete lists of categories with a view to ascertaining whether the legislation in question fairly considered falls *prima facie*

ing mistakes of the local body
Allison and Mohammad Ismail,
MUNICIPAL BOARD, MUTTRA,
12 B A 76=1939 J
1939 O L R. 415
A.I.R

—Clear language—Intention—Reference to other

or the pretence or in powers to carry out
vers and trespass on
Here again matters
udicial notice must be
in a case which calls
the Act, in so far as it

itself clearly authorizes the issue of a notification with retrospective effect, it must be
notification is forbidden.
tive notification (*et c.*) and
for the commencement of the Act earlier than the date of the notification itself, is issued,
notification need not be rejected as
Court can sever it and give effect to it
of the notification on the ground that
to the public until the latter date
JJ) G P STEWART v BROJENDR,
184 I C. 689=12 E C 271=2 Fed L J
69 O L J 573=43 C W N 1
A.I.R 1939 Cal 620

—Constitution Act—Legislative powers of Central and Provincial Legislatures—Taxation Power of Province affecting Central Legislation—Validity—If *ultra vires*—Tests to determine—Considerations for Courts—*Rest v. N. West American Ltd. et al.* and 37

Canada, and imposing upon every bank an annual payable under any other Act
natives for default in payment
be merely "part of a legislative
operation within the Province
of those banking institutions which had been called

ATTORNEY-GENERAL OF CANADA 1939 A C 117=180 I C 807=11 R P C 189=1939 M W N 142=A.I.R 1939 P C 53 (P Q).

—Directory or mandatory—Test—Section worded
because imperative
disregard of its
did. It is the duty

INTERPRETATION OF STATUTES

question whether the terms of a statute are to be regarded as imperative or directory only turns upon a correct appreciation of the scope of the Act itself, and is not to be controlled by the consideration whether substantial injury has or has not resulted (*Leach C J and Krishnaswami Aiyangar, J*) MANICKAVASAKA THEVAR v CHIDAMBARAM PILLAI 50 L W 886= (1939) 2 M L J 928

—Duty of Court

A Court must interpret the law as it finds it without adding to or taking away from the express provisions of the statute even if the express language of the statute leads to anomalous results (*Nawal Kishore C J Ramjitmal and Sukhdeoanarain J J*) RUGHNATH v FATEHSINGH 1939 M L J 21 (C)

—Duty of Court—Expounding of Act

The business of a Court of construction is not to improve upon the words of an enactment but to expound them. The question is not what the Legislature meant, but what its language means, that is what the Act has said that it meant (*Madhavan Nair and Abdul Rahman J J*) SECRETARY OF STATE FOR INDIA v ARUNACHALA MUDALIAR 1939 M W N 646= I L R (1939) Mad 1017=50 L W 486= A I R 1939 Mad 711=(1939) 2 M L J 23

—Duty of Court—Plain provision of law

It is not the functions of Courts to make alterations in the terminology of the plain provision of law as in that case they would not be interpreting but making law (*Stone, C J and Niyogi J*) ALL INDIA RAILWAY MEN'S BENEFITS FUND LTD v RANCHAND HEMRAJ I L R (1939) Nag 357=1939 N L J 238= A I R 1939 Nag 179

—Duty of Court—Words plain—Ascertainment of intention—Propriety

Where the meaning of the words of a section of a

appeal

An enabling section which confers additional rights in certain cases cannot be read as taking away rights which have already been expressly conferred when they are such valuable and those of appeal (*Stone, C J and* ISHAK v KUNJBIHARI SINGH

—Explanation to section

An explanation does not enlarge the scope of the original section that it is supposed to explain (*Tek Chand and Dalip Singh, J J*) KISHAN SINGH v

INTERPRETATION OF STATUTES

—MAY v CENT

39 I T R 293=

A I R 1939 Sind 293

—Fiscal Act—Strict construction—Construction in favour of subject

Per Iqbal Ahmad, J—Statutes which authorize the imposition of taxes on or the levy of fees from the public must always be strictly construed and unless a subordinate Legislature or a statutory body is in express and unambiguous terms given authority by a competent Legislature to impose taxes or to levy fees such authority must be denied to it. In other words an authority to impose a tax or to levy fees cannot be deduced from provisions of doubtful import and when the words used in a statute are capable of two interpretations one in favour of the taxing authority and the other in favour of the subject the latter interpretation must hold the field. The reason for these rules is that it is opposed to the well-recognized conceptions governing a progressive state of society to permit statutory bodies to assume by inference from the words of an enactment the authority to impose taxes or to levy fees, as nothing is more liable to abuse than such supposed authority (*Iqbal Ahmad Allop and Mohammad Ismail J J*) MEWA RAM v MUNICIPAL BOARD MUTTRA 183 I C 1=12 R A 76= 1939 A L J 500=1939 O L R 445= 1939 A W R (H C) 525= A I R 1939 All 486 (F B)

—Forfeiture clause—Right to invoke—Burden of proof Alberta Intestate Succession Act 1928 Cap 17—British Columbia Administration Act 1925, Cap 2 S 127 (1)—Construction

Where a party asks the Court to invoke and apply a statutory forfeiture it is for him to prove the facts necessary to establish the statutory forfeiture. Under the provisions of S 19 (1) of the Alberta Intestate Succession Act, Cap 17 which is in identical terms with S 127 (1) of the Administration Act, British Columbia

ate of affairs existing at the

has to be considered. The

husband the section will not under the statute cannot be in) MICHEL BURNS & MABEL 91 I C 993=11 R P C 276= 1939 M W N 241 (P C)

—General and specific provisions—Exclusion of general by specific provision

Where a statute by an express article deals with a must prevail over the general) SHRIDHAR MAHADEO 41 Bom L E 1223 the words—Rule of ejusdem

generis

In construing a statute, the usual rules of construction must be applied unless there is something to suggest the contrary. When therefore general words follow particular words, they must be restricted to the of ejusdem RANDAYAL

13 I C 128=

INTERPRETATION OF STATUTES.

12 R.N. 43(2) = 1939 N.L.J. 228 =
A.I.R. 1939 Nag. 186 (F.B.)

—General principle—Construction as to destroy existing rights—When can be adopted.

—Harmonious construction—Different statutes.

If two different statutes allow different authorities to forbid certain acts for different purposes the provisions of the two statutes are not necessarily inconsistent though there might be an inconsistency if the statutes allowed different authorities positively to permit certain acts. (*Iqbal Ahmad, Allsup and Mohammad Ismail, J.J.*)

MEWA RAM v. MUNICIPAL BOARD, MUTTRA.
183 I.C. 1 = 12 R.A. 76 = 1939 A.W.R. (H.C.) 525 =
1939 O.L.R. 445 = 1939 A.L.J. 500 =
A.I.R. 1939 All. 466 (F.B.)

—Headings—Nature of—Reference to

The preamble of a statute has always been regarded as a good means of finding out its meaning and the headings prefixed to the sections or sets of sections in statute are regarded as preamble to those sections and therefore a safe guide the headings or sub-headings extend the scope of the law free from ambiguity.

SAVITRI DEVI v.

L.L.R. (1939) A. 275 = 182 I.O. 84 = 11 R.A. 645 =
1939 A.L.J. 71 = 1939 A.W.R. (H.C.) 121 =

44 C.W.N. 11

—Income tax Acts—English decisions—Value of
A Court must interpret the relevant sections of the

1939 I.T.R. 452 = 1939 A.L.J. 631 =
1939 A.W.R. (H.C.) 664 = A.I.R. 1939 All. 593

—Intention of Legislature—Enquiry into—Duty of Court

It is one of the established canons of interpretation that where the words of a statute are plain and clear and admit of but one meaning, it is not open to the

—Intention of legislature—Words precise and unambiguous—Rule of construction

If the words of a statute are themselves precise and unambiguous, then no more can be necessary to expound those words in their ordinary natural sense. The words themselves alone do in such a case best declare the intention of the law giver (*Abdul Ghani and Nagarmara*

Y. D. 1939—44

INTERPRETATION OF STATUTES.

(*Iyer, J.J.*) NAGAMMA v. PUTTANARASAPPA

17 Mys L.J. 376 = 44 Mys. H.C.R. 392.

—Jurisdiction—Civil Court—Exclusion.

It is a settled rule of construction of statutes that the usual jurisdiction strictly construed. CIVIL RECEIVER, B. 1939 Lah. 237. —Ouster of—Act special remedy—

Remedy of suit—Bar of.

Where by statute powers have been given to any person for a public purpose, by which powers an individual may receive injury, if the mode of redressing the injury is pointed out by the statute, the ordinary jurisdiction of Civil Courts is ousted. The exclusion of the Civil Courts' jurisdiction by the creation of a special machinery before a special tribunal need not be express but may be by necessary implication (*Wadsworth J.*)

SUBBAYYA v. THIPPA REDDI. 50 L.W. 364 =
1939 M.W.N. 907 = A.I.R. 1932 Mad. 967 =
(1939) 2 M.L.J. 604.

—Language not clear.

Although the language of a statute is the first test for its interpretation there are other equally important tests when the language is not clear and unambiguous,

possible. In such cases the words 'such appears to be and justice' and *Blacker*, 80 I.C. 835 =
11 R.L. 721 = 40 Cr L.J. 497 = 41 P.L.R. 137 =
A.I.R. 1939 Lah. 81 (F.B.)

VER, AMBALA. 41 P.L.R. 128 = A.I.R. 1939 Lah. 237.

—Meaning of words—Ejusdem generis rule.

The words in a statute are *prima facie* to be taken in their usual sense unless the reasonable interpretation of the statute requires them to be used in a sense limited to things *ejusdem generis* with those which have been specifically mentioned before. The meaning of the

sought in the constituent parts of the phrase; but the definition must itself be interpreted before it is applied, and interpreted, in case of doubt, in a sense appropriate to the phrase defined and to the general purpose of the enactment (*Sir George Rankin*.) CADIJA UMMA v.

defined.

When a phrase has been first introduced and then defined, the definition *prima facie* most entirely determine the application of the phrase; but the definition must itself be interpreted before it is applied, and interpreted, in case of doubt, in a sense appropriate to the phrase defined and to the general purpose of the enactment (*Sir George Rankin*.) CADIJA UMMA v.

INTERPRETATION OF STATUTES

DON MANIS APPU 1939 A C 136=180 I C 971=
11 R P C 201=A I R 1939 P C 63 (P C)

—*Meaning of words—Two expressions used in Act*
—If to be construed as having same meaning or distinct meanings

Prima facie when two expressions are used in an Act of Parliament the Court ought to assume that they are intended to bear distinct meanings but on the other hand, it may appear from the context that the two expressions are used interchangeably and are not intended to have a different meaning (*Beaumont C J*)
BOROUGH MUNICIPALITY OF AHMEDABAD v AHMEDABAD MANUFACTURING AND CALICO PRINTING CO, LTD
41 Bom L R 1015=
A I R 1939 Bom 478

—*Objects and reasons*

It is a fundamental principle of the interpretation of statutes that if they are capable of an interpretation as they stand the objects and reasons for which they were passed must not be considered (*Almond J C*)
JAN v MUNICIPAL COMMITTEE PESHAWAR
181 I C 16=12 R Pesh 24=40 Gr L J 851 (1)=
A I R 1939 Pesh 40

—*Objects and reasons—Reference to—If justified*

While interpreting a statute, it is not permissible to make reference to Statement of Objects and Reasons

—*Penal Act—Strict Construction*

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person the b
construed str
EMPEROR v

40 Cr L J

—*Penal*
adopt interpret

When there are provisions of a penal and fiscal provision in a statute it is doubly the duty of the Court to adopt the interpretation more favourable to the subject (*Reilly, C J and Shankaranarajana Rao J*)
RAMIAH v THE MYSORE CITY MUNICIPALITY

17 Mys L J 6=43 Mys H O R 592

—*Penal Statute—Principles of construction*

within it in express language (*Leach, Somayya J*)
RATHNAMMAL, SEC
STATE FOR INDIA (1939) M W N 101=
50 L W 300=A I R 1939 Mad 963=
(1939) 2 M L J 380

—*Permissive provision—Statutory power—Exercise of*

Where the authority to do certain act given by the Legislature is purely permissive and not imperative the Legislature must be held to have intended that the execution of the work permitted must be done in such a way

INTERPRETATION OF STATUTES

—*Plain meaning—Anomalies—Interpretation to give effect to intention—Permissibility*

It is no doubt one of the recognized canons of interpretation that the words used in a statute should be given their plain and ordinary meaning. But if such a method of interpretation results in manifest anomalies and is calculated to defeat the object with which the statute was passed it is open to the Courts to so interpret the words used as to give effect to the intention of the Legislature (*Iqbal Ahmad J*)
MADHO PRASAD v MAKHAN LAL
182 I C 325=11 R A 652=
1939 A L J 249=1939 A W R (H C) 179=
1939 B D 119=A I R 1939 All 328

—*Plain meaning of words—Duty of Court to give effect to*

Where the words of a section in a statute are plain the Court must give effect to them, and is not justified in depriving the words of their only proper meaning in order to give effect to some intention which the Court imputes to the Legislature from other provisions of the Act. Such a course can only be justified where a literal construction of the section is inconsistent with the meaning of the statute as a whole (*Beaumont, C J and Sen, J*)
REVAPPA v BALU SEDDAPPA
11 R B 267=40 Bom L R 1275=
1939 Bom 61

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If the words
of a statute confer a power, they are not to be withheld

—*Repugnancy—Duty of Courts to avoid*
It is a recognised principle that where one construction of an enactment will be in accordance with the existing enactments and another construction will be repugnant to them, the Courts will where possible adopt that repugnancy (*Rowland and*
HAMMAD YUNUS CHAM-
8 Pat 141=179 I C 519=
P 382=1938 P W N 815=
875 A I R 1939 Pat 49

—*Retrospective effect—Amending Act shortening period of limitation for suit—If retrospective*
See
BIHAR TENANCY ACT (AS AMENDED IN 1934) S 184
AND SCH II (2) (b) (ii)
1938 P W N 975=
20 Pat L T 38

—*Retrospective operation*

No statute can be construed to have a retrospective operation unless such a construction appears very clearly from the Act or arises by necessary and disputation. Retrospective operation is not to be a statute so as to impair an existing right or in otherwise than as regards matter of procedure less that effect cannot be avoided without doing to the language of the enactment. If the

INTERPRETATION OF STATUTES.

enactment is expressed in language which is fairly cap-

change in law—Amendment of plaint to include—Duty of plaintiff to apply for.

Where the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was commenced. A plaintiff is not bound to ask for an amendment of his plaint so as to include a new ground of claim arising out of the change in law pending the suit, because omission to do so will not debar the plaintiff from instituting a fresh suit on a new cause of action which is for the first time conceded to the plaintiff by the law.

Ghani and Nagerwara Iyer, PUTTANARASAPPA.

Retrospective operation—Rule.

It is a well-recognized rule that a construction is to be given to a statute so as to have a retrospective effect if a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. A retrospective operation should not be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect

attaches a new liability in respect of transactions or considerations already past, must be read into the statute. *Abdul Iyer, JJ.* NAGANMA v. PUTTANARASAPPA 17 Mys L J 376.

Similar Acts—Construction of one by language of other.

It is true that the rule as to the exposition of one Act by the language of another is not applicable to different statutes on different times. If the subject-matter is the same, it would not be improper to refer to the difference observed by the Legislature in the use of similar expressions. *Virappa Annaswamy Iyer, JJ.* 182 I O 779=12 R B.

Similar Acts—Question of ultra vires of Act—Decisions under one Act—Relevancy in construing another Act not in pari materia.

In constitutional cases and in all questions of ultra vires, the Court is not entitled to stray beyond the limits of the matter under discussion, nor lay down any general rule of construction of the Act. It is best not to widen

JAMADAR.

The general principle is that where new tribunals are created by new Acts, the powers of the old tribunals are not to be acted or acted on by the new Judges.

and not as Courts. *(Dhruv, J. C. and Mehta, J.) MIRZA ADAM KHAN v. KARACHI MUNICIPAL CORPORATION I L R 1939 Kar. 131=*

182 I O 283=12 R S 6=A I R 1939 Sind 165.

Words judicially interpreted—Re-enactment of statute retaining same words—Inference of acceptance by Legislature of judicial construction.

Where a certain interpretation has been put on certain words in a statute by the Courts, and the Legislature in re-enacting the statute retaining those words in the new

A I R 1939 Bom. 221.

Words judicially interpreted by Courts in particular manner—Re-enactment in same form—Inference—Change in law—Powers of Court.

Where Courts have consistently interpreted the law in

the same form it must be taken that the Legislature intended to adopt that view. *(Leach, C. J.) Jami Aliyangar, JJ.) VOTHYUR v. WESTERN R L R (1939) Mad. 566= 1939 M W N. 370= 49 L W 503=A I R 1939 Mad. 431= (1939) 1 M L J. 588 (F B).*

IRRIGATION AUTHORITY—Rights of—Construction—Duty to take precautions to prevent damage to others.

Extent of—Liability for damage.

Water in an agricultural tank is a lawful user and is not actionable for damage in the absence of negligence. But a zamindar or Government cannot be held entitled to construct new

interests of irrigation facilities generally to take such reasonable precautions as are obviously necessary to prevent damage to others. This is not to say that the irrigation authority is *prima facie* liable for the consequence of any escape of water from an irrigation tank owing to an act of God or to some unforeseen and improbable rush of water, but there is a duty to provide

JAINS. See HINDU LAW AND CUSTOM.

JAMADAR—Appointment of—Powers of Deputy Commissioner—Appeal.

A Deputy Commissioner has no unfettered authority of the

JAMMU AND KASHMIR HIGH COURT

to consideration Although there is no appeal against an order appointing a jamadar, if a person who has a reasonable title to be considered is left out of consideration, it is the duty of the authority ultimately responsible to Government for the contentment of the service in question to exercise the authority in such a way as to ensure that all who are entitled thereto, receive reasonable hearing (*Garbett F C*) SARDAR AHMAD & AHMAD ALI 18 Lah L T 53

JAMMU AND KASHMIR HIGH COURT—Order No 1 of 1928 Para 7 (b)—Decision of Revenue Commissioner—Revision

Para 7 (b) of Order No 1 of 1928 deals with appeals Commissioner It competent to the highest the decisions (*Qayoom C J*)

41 P L R J and K 61

JAMMU AND KASHMIR LIMITATION REGULATION, Art 60—Applicability—Recovery of advance paid for supply of goods

years from the time when the goods had to be delivered (*Abdul Qayoom C J*) ASHUR BAT & QADIR WAGE SUBHAN WAGE 41 P L R J & K 67

JAMMU AND KASHMIR NEGOTIABLE INSTRUMENTS REGULATION Ss 64 and 69—Pronote designating city at large as place of payment

—S 69—Pronote—Presentment at specified place—Necessity for
The specified place referred to in S 69 of the Negotiable Instruments Regulation should be a place where the

possession of the pronote by the promisee at that place would be sufficient (*Wazir, J*) HARI SINGH & CHARAG DIN 41 P L R J & K 9

—S 76 (c)—Presentment of pronote—Wazir
Any act or conduct of the maker of a pronote which is likely to produce in the mind of the holder an impression that the note need not be presented is sufficient to dispense with the necessity of presentment against such party (*Kichlu and Wazir JJ*) MAHINDAR & K 11

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our (*Abdul Qayoom C J*) PIR USAF SHAH & MAMA KACHRU 41 P L R J and K 47.
JAMMU AND KASHMIR WASIDARI RULES, S 35—Transfer by Wasidar—Previous sanction of Ruler—If necessary

In the old rules it was clearly mentioned that previous sanction of the Ruler would be necessary before any transfer could be made by the Wasidar but in the subsequent rules sanctioned in Samvat 1976 the word 'previous' was omitted from S 35 of the Wasidari Rules, and so the permission for transfer could now be obtained at a subsequent stage also (*Abdul Qayoom C J and Wazir, J*) BHAGAT RADHA KISHAN & LLOYD'S BANK SRINAGAR 41 P L R J & K 89
JUDICIAL COMMITTEE RULES (1925)—Order in Council 1920 R 9—Applicability to appeals to Federal Court See C P CODE (AS AMENDED IN 1920) O, 45 R 7 (1) AS APPLIED TO FEDERAL COURT APPEALS 1939 P W N 807 (F B).

JURISDICTION See also (1) C P CODE S 9 AND S 115 (2) LETTERS PATENT

Absence of
Civil and Criminal Courts
Civil and Revenue Courts
Forum of trial
Inherent—Lack of
Irregularity in the exercise of
Separate and independent causes of action

—Absence of—Decree for dissolution of Hindu marriage—Decree based on erroneous view of law—If nullity

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J J) HARIPADA ROY & KRISHNA BENODE ROY
183 I C 137=12 R C 146=69 C L J 367=
43 C W N 659=A I R 1939 Cal 430

—Civil and Criminal Courts—Avoidance of con-
and Criminal Court—
adjudicated on fully by
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ditions—Decree of Civil
ion of non compoundable
tion—Relevancy of Civil

Court's judgment

Wazir, J—The higher grounds of public policy undoubtedly necessitate the avoidance of conflict of decisions between Criminal and Civil Courts established for beneficent and good government Generally Criminal Courts should not try over again matters which have been thoroughly dealt with and finally decided by a Civil Court of competent jurisdiction There may be rare exceptions to this rule founded on the discovery of new, cogent and important evidence But ordinarily the principle must prevail and it is of the highest importance and relevancy to show to a Criminal Court that the matter which the Criminal Court is asked to adjudicate on has already been fully dealt with by a Civil Court The grounds of the decision of the Civil Court must for that purpose be scanned and the judgment of that Court becomes relevant Criminal Courts in the exercise of jurisdiction should not be permitted to rehear the proceedings of Civil Courts for policy harmony between the deci-

JURISDICTION.

sions of the two Courts must be secured. But when there is no real possibility of conflict between the prosecution and the Civil Court's decree, there can be no bar of prosecution. As a matter of public policy there can

serve as an effective bar to a prosecution by the Crown.

Sen, J.—There can be no estoppel of a criminal prosecution and no ratification of a criminal offence; and however necessary and desirable it may be, as a matter of public policy, to prevent conflict between decisions of Civil and Criminal Courts, it is of far greater moment to the state that no non-compoundable offence should be left unpunished if it is possible to secure evidence to prove such offence. There can be, besides, no "relating back" in the case of an offence as a result of a Civil proceeding which treats the act as the foundation of the civil claim, although the Criminal Court ought, as a rule, to take into consideration the Civil Court's judgment relating to such claim (*Wassoodew and Sen, JJ*)

EMPEROR v RAMCHANDRA RANGO
181 I.C. 870 = 11 B.B. 356 = 40 Cr. L.J. 579 =
41 Bom. L.R. 98 = A.I.R. 1939 Bom. 129

Civil and Revenue Courts—Suit for a mandatory and prohibitory injunction by one co-tenant against another.

Where the parties are co-tenants in the plots in dispute and are both claiming through the landholder and one claims against the other a mandatory injunction for the removal of certain constructions and a prohibitory injunction restraining him from doing anything which would alter the character of the plots in question, the cause of action is the raising of the construction and the relief asked for, namely their removal by a mandatory injunction can only be effected through the Civil Court. So such a suit is cognizable by the Civil Court (*Collister, J*) KIRPA SHANKAR LAL v RAJA RAM LAL. 1939 A.W.R. (H.C.) 267 = 1939 R.D. 230 =
A.I.R. 1939 All. 385

Forum of trial—Determination—Allegations in plaint—Plea of defendant—If material See COURT FEE—DETERMINATION 182 I.C. 178 = 5 B.B. 728

Inherent lack of jurisdiction and jurisdiction dependent on conditions—Distinction—Decree by Court without jurisdiction—Validity—Void and voidable decree. See DECREE—VALIDITY 1939 P.W.N. 631.

Irregularity in the exercise of—Want of jurisdiction—Distinction—Omission to object at the time—Effect—Waiver.

Fundamentally speaking, a judgment of a Court with out jurisdiction would be a nullity. But Courts have drawn a distinction between want of jurisdiction and irregularity in the assumption and exercise of jurisdiction. Although jurisdiction cannot be conferred by consent where there is an entire absence of jurisdiction, in a case where the Court is competent to entertain the suit, if it were competently brought, the defendant may be barred by his own conduct from objecting to the irregularities in the institution of the suit, unless the Judge has no inherent jurisdiction over the subject matter of the suit. A party who has allowed the Court to exercise its jurisdiction in a wrong way cannot afterwards turn round and challenge the legality of the proceedings in a case where jurisdiction over the subject matter exists. Where the defect in jurisdiction arises merely by reason of an irregularity in the commencement of the proceedings before a Court which gets a suit under

KARACHICITY MUN. ACT (1933), S 16.

a wrong order of transfer, and the parties neglect to question the irregularity and concur in the Court's assumption of jurisdiction, the parties must be held to waive the objection of jurisdiction and cannot be

initial procedure
I have led to the
AJAM IBRAHIM
1939 Bom. 472 =
1939 Bom. 485

Separate and independent causes of action—Prayer for two reliefs in same plaint—Court having jurisdiction only in respect of one of them—Effect.

The mere fact that a plaintiff chose to pray in the same plaint for two reliefs, which are based on separate independent causes of action in respect of one of which alone the Court had jurisdiction cannot confer jurisdiction on that Court in respect of the other. (*Bennet and Verma, JJ*)

ABDUL RAHMAN v SALAMAT ULLAH.

I.L.R. (1939) All. 167 = 180 I.C. 409 =

11 B.A. 457 = 1939 A.L.J. 50 =

1938 A.W.R. (H.C.) 873 = A.I.R. 1939 All. 163

KACHIN HILL TRIBES REGULATION (I OF 1935), S 9—*Applicability—Accused not a member of hill tribe—Application by him for transfer—Powers of High Court—Burma (Frontier Districts) Criminal Justice Regulation, Sch. cl. (11)*

The Kachin Hill Tribes Regulation applies only to persons who are members of a hill tribe and not to persons who, though they happen to be residing in the Kachin Hill Tracts, are not members of a hill tribe. The Burma (Frontier Districts) Regulation I of 1925 applies to persons residing in the Kachin Hill Tracts who are not members of a hill tribe. Where, therefore, the accused is not a member of a hill tribe, an application by him for transfer of the case from the Court of the Sessions Judge of the Kachin Hill Tracts, Bhamo, to some other Court outside the District of Bhamo, or to some other Court of competent jurisdiction within that district, must be made to the High Court and not to the Commissioner of the Division as the High Court appointed under S 9 of the Kachin Hill Tribes Regulation. The third proviso to Cl (11) of the Scaudelle in the Burma (Frontier Districts) Regulation does not take away from the High Court the power to transfer cases under S 526, Cr. P. Code (*Ba U and Spargo, JJ*) MAUNG BA KU v DEPUTY COMMISSIONER, BHAMO.
1939 Rang. L.R. 614.

KARACHI CITY MUNICIPAL ACT (XVII OF 1933), Ss 16 and 17—*Scope—Judge of Small Cause Court acting under—If "Court" or persona designata—Order by—Revision—Interference by High Court—C. P. Code, S 115*

Act, which confers upon the Judge certain powers for the purpose of any appeal, inquiry or proceeding. Such conferment would be unnecessary if he were acting as a Court and not as a *persona designata*. There is no reason for presuming that the Legislature in enacting Ss 16 and 17 departed from the general principle and established practice, whereby matters in dispute in election which require prompt disposal are decided by Judges; it is true but not by Courts. Orders passed by the Judge of the Karachi Small Cause Court under Ss 16 and 17 are therefore not subject to revision by the High Court under S. 115, C. P. Code. (*Datta C. and Mehta, J*) MIRZA ADAM KHAN v K.A.

KARACHI CITY MUN ACT (1933), S. 117.

MUNICIPAL CORPORATION I L R 1939 Kar. 131 = 182 I C 283 = 12 R S. 6 = A I R 1939 Sind 165
 —Ss 117 and 251—*Construction and scope—Revision from order of magistrate in appeal against assessment—Procedure and powers of Court—Tribunal—If Court or persona designata—Interference—Grounds.*

An application to revise an order of a magistrate passed in an appeal against an assessment levied by the Karachi corporation lies under S. 117 of the City of

means a Judge of that Court whereto an application in revision lies from the order of the Magistrate, whether in Sessions Court jurisdiction or otherwise. So far as applications in revision against orders passed in appeal are concerned, S. 251 applies, and the powers and procedure in such proceedings are the powers exercisable by the Court and the procedure provided under the C. P. Code, S. 115, will guide and control the Court. Therefore it is only on a question of jurisdiction that the Court will interfere under S. 117 of the City of Karachi Municipal Act. Where the Magistrate in deciding the appeal makes no reference to the evidence on the record but relies only upon inspection of the site on which the assessment is levied, he acts with material irregularity so as to necessitate interference in revision (*Davis, J C*) **BHOJRAJ v EMPEROR**

I L R (1939) Kar 669

—S 251—*Construction—Court of the Judicial Commissioner of Sind—Meaning of—If persona designata or Court—Powers of revision—Grounds for interference* See **KARACHI CITY MUNICIPAL ACT Ss 117 AND 251**

I L R (1939) Kar 669

KARACHI SMALL CAUSE COURT OF 1929 S 28—*Distress—Principle of Applicability—Goods attached in execution Court—If in custodia legis—Landlord's claim for rent.*

English common law process of distraint has been made applicable in India by statute. But when the old common law process of distress in Karachi City, it meant to apply it to butes and ex ceptions, but the st

LAH H C. RULES AND ORDERS, VOL II CH I

(*Davis, J C. and Tyabji, J*) **TOPANDAS v AMMU MULLAH**, I L R 1939 Kar. 427 = 181 I C 391 = 11 R S 220 = A I R 1939 Sind 127.

KUMAUN—Custom—Applicability of Hindu Law. See **HINDU LAW—CUSTOM—KUMAUN**

1939 A L J 213

—*Hissedar—Rights of—Lands actually cultivated and lands entered as khudkasht*

If a hisvedar brings fallow land under the plough and actually cultivates it himself, he would be entitled to it, but he can acquire no title is not in his actual possession ed in his name as Khudkasht.

M SINGH v DEB RAM.

(H C) 733 = 1939 R D 579 =

J. 1053 = A I R 1939 All 751

—*Status and rights of*

are representatives of old proprietors who hold the entire area of the village in virtue of having first reclaimed it from waste. They are in all respects equal to proprietors except that they cannot sell the holding and pay in addition to the revenue a small sum known as Malikana. The proprietors have no right to interfere with them or their lands and on the death of any one of them without direct heirs, the lapsed holding reverts to the whole community of Khakars and not to the hissedar or proprietor (*Ismail, J.*) **PANCHAM SINGH v. DEB RAM**.

1939 A W R (H C) 733 = 1939 R D 579 =

1939 A L J 1053 = A I R 1939 All 751.

—*Village papers—Value*

The village records in Kumaun garhwal are not always reliable documents and they could not be given such weight of presumption as attaches to the regularly revised and checked village papers in the plains. (*Ismail, J.*) **PANCHAM SINGH v DEB RAM**

1939 A W R (H C) 733 = 1939 R D 579 =

1939 A L J 1053 = A I R 1939 All 751.

KUMAUN RULES AND ORDERS R 14—

Applicability—Sust affecting validity of the grant in

Court by the section are also very wide. The term 'owner' therefore cannot be strictly construed and may include a legal owner as well as an equitable owner,

of liquidator.

It is clear from R. 68 of the Lahore High Court's Rules and Orders, Vol. II, Chap. I, that the liqui-

LAH. H. C. RULES & ORDERS, VOL. V, CH. 3 B LAND ACQUISITION ACT (1894), S. 11.

dator cannot consider the matter of compromise the point of view of pity or mercy. He must be a case that the compromise will be beneficial company (e.g.) that there is a contested claim the compromise is entered into, the payment made very much sooner than if the claim or on similar grounds. It would be liquidator is satisfied that the whole amount paid by the debtor, for him to file contemplated by R. 68. (*Young, C.J.*)

2. OFFICIAL LIQUIDATOR, PEOPLES BANK OF NORTH INDIA, LTD (IN LIQUIDATION) LAHORE

I L.R. (1939) Lah 324 = 41 P.L.R. 737 =

1939 Comp. C. 307 = A.I.R. 1939 Lah. 497.

—Vol. V, Chapter 3-B, R. 1 (11)—Appeal before Single Judge—Reference of point of law to Division Bench—Power to refer after deciding part of appeal. See PRACTICE—HIGH COURT

—Ch 3 B, Vol. V, R. 1 (11)—Question of law—

OF STATE 5 B.R. 980 = 12 R.P.C. 71 =

1939 O.A. 709 = 20 P.L.T. 739 = 1939 A.L.J. 859 =

41 C.W.N. 5 = 70 C.L.J. 334 = 183 I.C. 328 =

1939 A.W.R. (P.C.) 166 = 1939 O.W.N. 760 =

1939 O.L.R. 541 = 60 L.W. 406 =

A.I.R. 1939 P.C. 235 = (1939) 2 M.L.J. 722 (P.C.).

—S. 6 (3)—Declaration under—Conclusive character of—Limits—Parties aware of purpose of acquisition—Defective declaration if can vitiate acquisition proceedings.

A declaration under S. 6 (3) of the Land Acquisition

upon signing.

A judgment dictated in open Court can be reconsidered by the Judge before it is corrected and signed (*Skemp, J.*) MUNICIPAL COMMITTEE, DELHI v MOHAMMAD ASKRI

41 P.L.R. 472 =

A.I.R. 1939 Lah 546

LAMBARDAE—Appointment—Rule of primogeniture—Neglect of duty by father—If disqualified son.

offences involve grave moral turpitude and the son is under the incapable influence of the father, should the son be excluded. (*Garbett, F.C.*) JAI SINGH v RANJIT SINGH

18 Lah.L.T. 43

—Appointment of—Primogeniture—Rule of.

If a lambardar resigns his post, the Revenue authorities cannot appoint in his place any candidate they might choose to select from his family. They can appoint only a person who has a right to succeed under the rule of primogeniture, and if he is a minor, they must appoint a *turbar* on his behalf. (*Garbett, F.C.*) HAO NAWAZ v. WARYAM KHAN.

18 Lah.L.T. 56

—If entitled to receive capital money in Land Acquisition case.

In a Land Acquisition case a Lambardar would not be entitled to receive capital money *in his office*, nor

pany, if this is not stated. But where the parties are fully aware of the purpose for which the acquisition is made, a defect in the declaration will not vitiate the acquisition proceedings. (*Collister and Barpas, J.J.*) RADHASWAMI SATSANG SABHA v. TARA CHAND.

184 I.C. 293 = 12 R.A. 208 = 1939 A.L.J. 757 =

1939 A.W.R. (H.C.) 436 = A.I.R. 1939 All. 557.

—S. 9—Sufficient notice but not special notice—

OF STATE

in the property sought to

ent notice of the intended

the absence of a special

complaint (*Harris and*

Alura, J.J.) SECRETARY OF STATE v. KARIM BUX.

180 I.C. 882 = 11 R.A. 521 = 1939 A.L.J. 85 =

1938 A.W.R. (H.C.) 833 = A.I.R. 1939 All. 130.

—Ss 11 and 18—Award—Procedure to be adopted—Compensation and apportionment—Dissatisfied claimant—Remedy

According to the terms of S. 11 and the succeeding sections of the Land Acquisition Act, it is clear that the Collector must, when he makes his award, take into account the interest of all parties assess the total amount of compensation and apportion it as between the claimants. A series of awards in respect of the same property is not contemplated by the Act. If a person interested is not given anything by the apportionment, his remedy is to claim a reference challenging the award and not to ask for another award in his favour. (*Harris and Alura, J.J.*) SECRETARY OF STATE v.

521 =

833 =

1. 130.

ard =

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ment

LAND ACQUISITION ACT (1894), S 15

Although the Collector, after he has made his award under S 11 of the Land Acquisition Act is not competent to amend it or make a supplementary award, except in cases of clerical errors or other mistakes or omissions apparent on the face of the records he is not in any way incompetent to enter into a compromise with the claimants who have got a reference under S 18, Land Acquisition Act and pay them an extra sum of money on the basis of such settlement on condition of their withdrawing the reference. An entry of such an order for payment in the award statement kept in Form A prescribed in Appendix 7 of the Civil Accounts Code does not amount to an amendment of the award itself. The award statement is, therefore, not inadmissible in evidence (*Mukherjee and Roxburgh, JJ*) PROVINCE OF BENGAL *v* SATISH CHANDRA DE

43 CWN 1185

—Ss 15, 23 and 24—*Land's potentiality—Assessment—Principle—Acquiring authority only possible purchaser*

Even where the only possible purchaser of the land s

would ascertain it in a case where there are several possible purchasers and that he is no more confined to awarding the land's poramboke value (i.e. value of similar lands without its potentialities, in the former case than he is in the latter (*Lord Romer*)) VYRICHERLA NARAYANA GAJAPATIRAJU *BAHADUR GARU v* THE

41 Bom L R 725 = 43 CWN 557 =
1939 MWN 708 = 1939 A C 302 = 181 IC 230 =
20 Pat LT 381 = 1939 OWN 480 =
1939 OLR 303 = A I R 1939 PC 98 =
(1939) 2 M L J 45 (PC)

—S 18—*Applicability—Property in possession of tenant—Claim for compensation—Award in favour of owner without any reference to the tenant's claim—Ob*

LAND ACQUISITION ACT (1894), S 24

proper interpretation of the proviso to S 50 (2) is that it relates only to that sub section and makes it clear that a company or local authority has not been granted a power to demand a reference as to compensation, by virtue of the power given therein to appear and adduce evidence before the Collector or Court on the subject. It does not, therefore, take away the rights which the company or the local authority might enjoy as claimants or persons interested under S 18 of the Act (*Mukherjee and Roxburgh, JJ*) COMILLA ELECTRIC SUPPLY, LTD *v* EAST BENGAL BANK LTD

I L R (1939) 2 Cal 401 = 43 CWN 973 =
A I R 1939 Cal 669

—S 18 (1) (2)—*Requirements as to objections—Grounds, meaning of*

The Land Acquisition Act by S 18 does not require particulars to be given. It requires only the grounds of the objection to be given and by grounds is meant such of the four grounds mentioned in S 18 (1) as are relied upon (*Lord Porter*) BHAGWATI *v* RAM KALI

66 IA 145 = I L R (1939) All 460 =

11 IC 211 =

WN 677 =

WN 543 =

LT 523 =

LR 638 =

1939 MWN 894 = 41 Bom L R 1028 =
1939 A W R (PC) 58 = A I R 1939 PC 133 =
(1939) 2 M L J 98 (PC)

—S 23—*Compensation for building apart from site—Valuation—Method to be adopted*

Where the subject to be valued for purposes of compensation is a building apart from the site the value of the building has to be fixed by ascertaining the cost of reproducing the building at the present time and then allowing for depreciation in consideration of the age of the building and for the costs of such repairs as might

A I R 1939 PC 235 = (1939) 2 M L J 722 (PC)

—S 23—*Market value—Meaning of*
in S 23 of the Land

IR *v* REVENUE DIVI

M

R (1939) Mad 532 =

601 = 181 IC 230 =

381 = 11 R PC 231 =

= 1939 OLR 303 =

A W R (PC) 82 =

—Ss 18 and 50 (2) proviso—*'Person interested'—Company on whose behalf land is acquired—Whether entitled to demand reference*

A company or local authority on whose behalf land is being acquired is a person interested within the meaning of S 3 (6) of the Land Acquisition Act if it has an interest in the lands that are the subject of acquisition and it has, therefore, a right to demand a reference under S 18 of the Act. This right is not taken away by the proviso to S 50 (2) of the Act. The

60 IA 104 = (1939) 2 M L J 20 (PC)

—S 21 (5)—*Meaning of*
Sub-S 5 of S 24 of the Land Acquisition Act means no more than this that in valuing the land acquired, on the date of the notification under S 4 (1) of the Act it must be valued as it then stood, and not as it would stand when the land had been acquired and used for the purpose for which it was acquired. But it does not

LAND ACQUISITION ACT (1894), S. 30.

mean that the possibility that a particular purchaser of land will give a higher price for it by reason of its possessing a special adaptability must be disregarded merely because the land will be more valuable in his hands when he exploits that adaptability than it would be if

5 BR 601 = 11 R P C 231 = 41 P L R 394 =
50 L W 1 = 41 Bom L R 725 = 1939 M W N 708 =
1939 A C 302 = 181 I C 230 =
1939 A W R (P C) 82 = 20 Pat L T 381 =
43 C W N 557 = 1939 O L R 303 =
1939 O W N 480 = A I R 1939 P C 98 =
(1939) 2 M L J 45 (P C.)

—S 30—
between Zemindar
compensation
Complicity.

Though a reference to a Subordinate Judge under S. 30 of the Land Acquisition Act cannot be called a suit, the decision by the Subordinate Judge in the matter which involves a dispute between a Zemindar

A I R 1939 Mad. 716

—S 31(2), Proviso 3—Applicability—Daughters of owner claiming share in compensation—Collector making reference to Court—Daughters and their assignees appearing—Assignment by consent recognised by Court—Claim of assignees for share in compensation adjudicated upon—Reference made by Collector against—Assignees

The principle is
Ss. 18 and 30,
parties to proceed
Tribunals have been constituted under the Act to deal

Tribunal under Land Acquisition Act are as much subject to the principles of *res judicata* as adjudication by Courts under the Civil Procedure Code. Upon the acquisition of some land owned by a person his daughters claimed a share in the compensation awarded. They did not accept the Collector's order as to apportion

rejected. They did not appeal from that order.
be
and
order
appealed against the order of adjudication of their claims the order stood and the assignees had no right to bring a separate civil suit. (Davis, J. C. and Mehta J.) FATEH MAHOMMED v THARIOMAL,
I L R (1939) Kar 152 = 180 I C 681 =
11 R S 191 = A I R 1939 Sind 66

—S. 50(2) proviso—Effect of—Company on whose behalf land is acquired—Right of, to demand reference.
Y. D., 1939—45

LAND IMPROVEMENTS LOANS ACT (1883), S. 7.

See LAND ACQUISITION ACT, SS 18 AND 50 (2) PROVISOR.
43 C W N 973.

—S 51—Order relating to distribution of compensation money—Appeal

There is nothing to exclude an appeal from an order relating to the distribution of compensation money under the Civil Procedure Code (Davis, J. C. and

FATEH MAHOMMED v THARIOMAL,
I L R (1939) Kar 152 = 180 I C 681 =
11 R S 191 = A I R 1939 Sind 66,

LAND IMPROVEMENTS LOANS ACT (XIX OF 1883), S. 4—Applicability—Improvements already effected before grant of loan—Advances—Right to priority—Agriculturists' Loans Act, S. 4

The words of S. 4 of the Land Improvements Loans Act are unambiguous and can only be held to apply to improvements which have not been effected at the time when the loan was granted and cannot be held to apply to improvements which have been carried out at

Therefore the Government's priority in respect of advances applied for and made after the improvements were carried out with funds belonging to a private individual. A comparison of S. 4 of the Land Improvements Loans Act and S. 4 of the Agriculturists' Loans Act would be granted under the Act it would not be Loans Act. (Madha-ji) SECRETARY OF

STATE FOR INDIA v ARUNACHALA MUDALIAR
I L R (1939) Mad 1017 = 10 L W 486 =
1939 M W N 616 = A I R 1939 Mad 711 =
(1939) 2 M L J 23.

—S 4—Applicability—Loan for weeding land and for making stone pavement—If comes under Act—

LAKSHMAN VENKATESH v SECRETARY OF STATE,
R 257 =
183,
against
P Act,

S 100

A loan advanced under the Land Improvement Loans Act is, subject to the proviso to S. 7 (c) a first charge on the land for the improvement of which the loan is advanced, and the statutory charge created by S. 7 is enforceable against the land even in the hands of a

—S 7—Operation of—If affected by Registration Act, S. 89 See REGISTRATION ACT, S. 89
41 Bom L R 257.

—S 7 (1) (c)—Effect of.
The effect of S. 7 (1) (c) of the Land Improvement Loans Act is to create a charge upon the property for the benefit of which the loan is taken (Burton, F. C.) YESHWANT GANPAT KOWTI v BALIRAM
1939 N L J 235.

—S 7 (1) (c)—Scope—Non compliance with R. 12 of the rules—Effect of
The non inclusion of condition 14 of the conditions appended to form I annexed to the rules under the Land

LAND IMPR LOANS ACT (1883), S 7

Improvement Loans Act in a bond for a tagavi loan under the Act as provided by R 12 of the rules does not have the effect of depriving the Collector of the power to proceed under S 7 (1) (c) of the Act (*Wadia J*) LAKSHMAN VENKATESH v SECRETARY OF STATE 182 IC 635 = 12 RB 182 =

41 Bom LR 257 = AIR 1939 Bom

—S 7 (3)—Discretion of Collector selecting of recovery of loan

It is clear on a per the intention of the tagavi loan should r benefit of which the S 7 gives the Collec the order in which he should resort to the various modes of recovery permitted by the section (*Wadia J*) LAKSHMAN VENKATESH v SECRETARY OF STATE 182 IC 635 = 12 RB 25 = 41 Bom LR 257 =

AIR 1939 Bom 183

LANDLORD AND TENANT See also (1) LEASE

(2) T P ACT SS 105 117

—Abadi—Abandonment of house—Proof of leaving the village if essential

In order that the occupier of a house in the Abadi of a village may be held to have abandoned the house it is not absolutely necessary to show that he has left the village (*Rennet and Verma JJ*) FATTEN v HAR

ILR (1939) All 265 = 184 IC 49 =

12 RA 173 = 1939 A WR (HC) 206 =

1939 ED 138 = 1939 ALJ 104 =

AIR 1939 All 392

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Sa
fa

da of such interest or share his residential houses in the abadi do not unless specifically transferred pass to the transferee In the site of such a house his proprietary right is in proportion to the share owned by him in the mahal But as regards the residential houses he is the sole proprietor of the same and his proprietary interest in the building is in no sense appurtenant to his proprietary right as a zamindar in the mahal His residential house is a separate unit and in no sense a

AIR 1939 All 415 (FB)

—Abadi—Mortgage by ryot of house in—Liability to ejectment

LANDLORD AND TENANT

—Abandonment—Transfer of holding by chandnadar—Transferor remaining in possession of one room of house on holding with leave and licence of transferee—Effect of

Where a chandnadar has executed a kobala transfer

nues There is an chandnadar and the recover the holding ALIMAN BIBI v MD IR 1939 Pat 504

—Acquiescence or estoppel—If can make good absence of registered instrument for a settlement of tenancy

Where for the valid settlement of tenancy a registered deed was necessary as the property was worth more than Rs 100 its absence cannot be made good by any acquiescence or estoppel on the part of a party (*Dhawle, J*) SHIBA PRASAD SINGH v CHAMRU PASI 178 IC 362 5 BE 89 = AIR 1939 Pat 167

—Adverse possession—Payment of rent to zamindar by persons declared to be sub tenants—If renders their possession adverse

Where the relationship of the plaintiff and the defendant has been definitely decided judicially and the defendants had been declared to be sub tenants they must always be sub tenants The fact that by some mutual agreement the defendants paid the rent of a

1939 A WR (BE) 240

—Agreement conferring status of fixed rate tenant and agreeing not to eject—Legality—Subsequent application for ejectment—Maintainability See AGRA TENANCY ACT S 79—APPLICABILITY

1939 A WR (HC) 716

—Co-tenants—If can relinquish a part of the holding

Unless a holding is divided up between several co-tenants in every part of the holding it can be a valid relinquishment by a co-tenant (*HACROO PASTOR*) 1939 ED 301 = A WR (BE) 257

nt of rent for comm

Payment of rent for a considerable period does not create a tenancy when the landlord is not the proprietor of the land It is only *prima facie* evidence of

Person settling tenants on land of landlord and tenant—If tenant chooses to cultivate the latter lets him do so and tenant is impliedly only to squatters who cu-

LANDLORD AND TENANT.

ivate the land themselves. It can have no application to persons who are not cultivators and who settle persons on the land as th
tor. (*Sen, J*) SRISHI
LAL ROY.

—Demarcation
Reference to, if oblig.

Effect.

legal remedy open to him and he cannot later on come forward and say that he was illegally ejected. (*Marsh, S M*) KEDAR NATH v RAJA BIRENDRA BIKRAM SINGH, 1939 A W R (B R) 116 = 1939 A L J (Supp) 82

—Ejectment—Heirs of lessee—Rights

As sub-tenants are included in the definition of non-occupancy tenants, the interests of non-occupancy tenants other than thekaders are heritable. As such the heirs of the original lessee can hold on as his heirs and could not be ejected as trespassers. (*Marsh, S M*) SALAMAT ULLAH v WAZIR KHAN, 1939 A W R (B R) 181 = 1939 R D 415

—Ejectment—Land belonging to several co-owners—Suit by one co-owner only—Maintainability
See CO OWNERS—JOINT LAND

—Ejectment—Non occupancy r
ing under trespasser—Liability to ej.
owner

—Ejectment of recorded tenant—Unrecorded tenant, if bound by that judgment.

When an unrecorded tenant appeals against an ejectment in which recorded tenants were lawfully

tenant See AGRA TENANCY ACT—LICE
1931

—Entry as sub-tenant for over 25 years

If a person is shown as sub tenant of above and if during the critical period when a settlement

LANDLORD AND TENANT.

—Fixed rate tenancy—Acquisition by adverse possession, if possible.

Fixed rate tenancy can be acquired by adverse possession, if possible.

nts of a fixed rate up only if there is est, to an outsider has lasted longer arper, J M.) RAJ

R. (B R) 124 (2).
held adversely to

—Effect

When a fixed rate sh the fixed not be acquir concerned.

SINGH v. RAM HARAKH, 1939 R D 15 = 1939 A W R (B R.) 124 (2).

—Forfeiture—Breach of agreement—Undertaking to build thatched roof with tiles—Covenant not to make a chat—Creation of roof inside building under thatched roof—Effect of.

The defendants who were tenants of the plaintiffs executed an agreement in their favour that they would build a thatched roof with tiles on the house constructed on the land leased out to them and would not make a chat. The plaintiffs alleged that the defendants had broken the agreement by constructing a roof inside the building and under the tiled and thatched roof and claimed an injunction restraining the defendants from

started building

Held, that as a matter of law, it could not be said that the erection of a roof inside the building was itself a breach of the agreement between the parties. (*Wort, J.*) RAM IAL SAHU v MT BIBI ZOHRA, 5 B R 785 = 182 I C 618 = 12 R P 30 = AIR 1939 Pat 296.

—Forfeiture—Waiver of single breach—If operates as waiver of right for ever

It is true that, if after the landlord is aware of a cause of forfeiture he by some act recognizes the lease, he cannot be held to claim forfeiture for that particular example, if there is a right of lease for non payment of rent and after forfeiture has arisen, the landlord

would only operate in respect of a particular breach.

S M,
RAM
138 =
471.

Where the land was originally ordinary tenancy on which a grove was planted but by 1327 F, it was gradually extinguished and the Zamindar brings a suit for ejectment on the ground that the grove had ceased to

LANDLORD AND TENANT

exist in 1341 F, his suit has to be dismissed as the grove had ceased to exist as early as 1327 and the tenant had become a statutory tenant and not liable to ejectment (*Bomford S M and Mehta, J M*) JAI KISHEN LAL v GANGA SINGH 1939 E D 130 = 1939 A W R (B R) 192

—Holdings—Consolidation—Power of Assistant Collector

Under the existing law an Assistant Collector has no power whatever to consolidate holdings without the consent of the landlords (*Marsh S M and Mehta J M*) AMAR NATH v PARTIT 1939 E D 527 = 1939 A W R (B R) 227

—Holding over—Measure of damages

Where a tenant holds over after receiving notice vacating the premises he is liable to pay at double the rent. The rule is, however, and the Court may award more or less circumstances if there is evidence to justify (*A I R 1933 Lah 61 and 9 Lah 576 F Kishore C J*) MUBARAK v RUGHNATH 1939 M L R 219 (Civ)

—Holding over—Status of tenant—Purchase by him of certain shares of co sharers

The possession of a tenant after the expiry of his lease is not that of a trespasser, where the tenant has himself

lessor a sub lessee assignee

Privity of estate between the lessor and the lessee assignee can hardly be said to arise except where the interest of the lessee has been transferred in whole to an assignee (*Rowland and Chatterji J J*) SUKDEO PANDEY v RAMESHWAR PRASAD A I R 1939 Pat 522

—Lease—Validity—Perpetual lease to lady member of family and sale to other members immediately—Effect

A perpetual lease to a lady member of a family, followed on the next day by a sale of the zamindari in favour of the other members of the family is always to be viewed with suspicion. As regards the cultivators the intermediate lease holder is to be treated as non-existent in the family form (*Meer SOM*)

revenue—Awaiz

Remissions do not constitute a permanent reduction in the assessment and since the *maikawa* is based on the permanent assessment there would be no legal justification

Patindar holding immediately under proprietor—Purchase by of interest of tenant holder in execution of decree for rent due by latter—Effect—Right of patindar to enhance rent of under tenant holder from tenure holder

Where a superior interest in land and an inferior interest in it are united completely in the hands of one

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person, ordinarily the inferior right merges in the superior right. Where a *patindar* in execution of a decree for rent due by the immediate tenant holder under him brings that tenure to sale and purchases it himself, that tenure merges in the *patni*, with the result that an under tenant holder from the tenure holder whose tenure has been sold comes directly in touch with the *patindar* who becomes the immediate landlord of the under tenant holder. The *patindar*, as the landlord, is entitled unless precluded by a statutory prohibition or by any contract to the contrary, to have the rent of his tenant enhanced from time to time and get rent according to the current rate. It makes no difference whether the landlord is a proprietor holding directly

an allocation of plots among the members of a family by mutual agreement, that cannot override the law of succession (*Marsh, S M*) HAKKESH SINGH v PHULAIL SINGH 1939 E D 568 = 1939 A W R (B R) 244

—Right of other co tenant—Effect on

sub tenancy

On the death of an occupancy tenant, a sub tenant cannot continue to hold his sub tenancy without the consent of the landlord (*Varis, S M and Mehta J M*) SHUGAN CHAND v JAGRAM 1939 E D 603 (2) = 1939 A W R (B R) 273 (2)

—Permanent tenancy—Burden of proof—Inference from circumstances—Origin of tenancy unknown—Tenancy passing by succession and transfers by tenant—Effect of

The onus of proving that the tenancy in a particular case is a permanent one lies on the tenant. Where the origin of the tenancy is unknown, it is open to the tenant to show that the correct inference is that the right granted and enjoyed by him is a permanent one.

permanency of the tenant's rights (*Agarwala J*) ANANT TILU v RAMDHAN PURI 5 B R 327 = 179 I C 940 = 11 B P 427 = A I R 1939 Pat 350

tenancy—Circumstances justifying

nancy which was for residential purposes. The tenants have been holding for more than 70 years and though the rent in 1859 it was not enhanced any more there were two instances of succession and there were permanent structures in existence for nearly 60 years. There were certain awards and decisions in land acquisition cases under which compensation to the extent of one half of the amount awarded was allowed to the tenants.

Held that the above circumstances were quite sufficient to show that the tenancy was permanent.

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(*Mukherjee and Latifur Rahman, JJ.*) PROBHAS CH. MALLIK v. DEBENDRA NATH DAS. 43 C.W.N. 828

—Permanent tenancy—Date of tenancy known but not its terms—Inference from conduct of parties—Principle applicable.

Even if we know that a tenancy came into existence at a particular date or at a particular time, that by itself is not sufficient to show that its origin is known. What are material are the terms of the tenancy, and if the terms are not known, the fact that we know the date when the tenancy was created would not make much difference. If the character of the tenancy has got to be inferred from the subsequent conduct of the parties, the principle is just as applicable as in cases where we do not know the date of the creation of the lease (*Mukherjee and Latifur Rahman, JJ.*) PROBHAS CH. MALLIK v. DEBENDRA NATH DAS. 43 C.W.N. 828

—Permanent tenancy—Inference of—Circumstances leading to—Burden of proof—Land held by

A tenant alleging that his interest in the land is a permanent one has the onus on him to establish such an interest. Where the origin of the tenancy is unknown the nature and extent of the in from the facts proved in the pa course on the tenant to prove an inference. The fact that no paid for the land does not sugi tenancy at will cannot be inferre the tenant who was paying r a substantial building, though n Humble folk cannot be expect tructions costing considerable sums of money. What is substantial must be decided with reference to the status and position in life of the tenant, as well as tion. The fact that for a hundred years been demanded or paid is good ground fo permanent tenancy, particularly when it the land together with the building upon it has devolved from generation to generation on members of the same family. Where it is found that the structures, though kacbhha, are of a most substantial nature and are such as no poor man would be likely to build upon land unless his interest in the land is secured, then an inference of permanency is the only one which can be drawn. An inference of permanency can only be drawn where the facts point irresistably to such a conclusion. Where the facts are equally consistent with permanency or a tenancy at will permanency cannot be inferred, but where the facts are inconsistent with a tenancy at will and consistent only with a permanent tenancy, the latter is the only inference which can be drawn and the permanency of the tenancy must legally be inferred. It was found that the defendants' predecessors were in possession of the land in suit for over a hundred years and had built upon it a substantial structure consisting of mud walls and tiled roofs. The structure was very old and was in existence for very many years, and possession of the land together with the structure thereon was found to have been held by the defendants' family generation after generation without let or hindrance. No rent had ever been paid to the landlords for the said land and the plaintiff landlord and his predecessors had, until the

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very substantial structure, and though the value of the land in the locality had risen considerably they never made any attempt to obtain any rent from the tenants.

Held, that the facts of the case unequivocally and irresistably pointed to a tenancy of a permanent nature (*Harries, C J and Noor, J.*) ZAYAUDDIN v. SHAIKH DARGAHAN 18 Pat 571 = 6 B.R. 45 = 184 I.C. 363 = 12 R.P. 242 = 1939 P.W.N. 394 = 20 P.L.T. 579 = A.L.R. 1939 Pat. 448.

—Permanent tenancy—Inference of—Lease for indefinite term (bemeadi)—Settlement for purpose of erecting Gola house—Tenant not to alienate without consent of landlord and his heirs—Provision for increased rent if land found to be of larger area than mentioned in lease—Provision for exercise of rights by lessor and lessee and their heirs and representatives—Permanent or precarious tenancy—Inference. See LEASE—CONSTRUCTION 1939 P.W.N. 731.

—Permanent tenancy—Inference—When justified

notice to quit had been duly served on them. The defendants contended that they had a permanent tenancy and that, in any case, the plaintiffs (landlords) were estop-

defendants. The facts that were relied on by the defendants for establishing their case of estoppel were the

executed an ijara deed in favour of a person. They also relied on two agreements executed between them and the plaintiff in 1932 under which they (defendants) undertook not to construct a chat on the house constructed on the land and only to build a thatched roof.

Held that the acts or omissions of the landlords before the defendants came into possession could not be relied on by the defendants for establishing an estoppel against the plaintiffs. Even assuming those acts and omissions could be so relied on by the defendants, they did not amount to clear representations which caused the defendants to act in the way in which they did, so as to create an estoppel under S 115, Evidence Act. The agreement of 1932 also did not constitute any representation because, what was allowed by those agreements was referable to the interest which the defendants already had. Therefore in absence of contract to the contrary, the tenancy was from month to month within the meaning of S 106, T.P. Act, and there was no estoppel in the case which would prevent the plaintiffs from contending that what the defendants had got was merely a tenancy from month to month, and the plaintiffs having given valid notice to the defendants to quit, were entitled to eject them. S 53 A, T.P. Act, was of no help to the defendants. (*Port, J.*) RAM LAL SAHU v. MT. BIBI 1939 P.W.N. 731 = 20 P.L.T. 579 = A.L.R. 1939 Pat. 448.

Pat 296.
of pucca
of settle-

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ment of land—Tenants induced to take building sites in bazaars and to establish themselves in business—Tenants looked upon as permanent—Inference

The fact that substantial structures have been erected by the tenant on the land demised is not conclusive proof of a permanent tenancy. The object or purpose of the owner in effecting the settlement of land in the manner in which he did it is however an important clue to determine what the parties intended by the settlement made. If, on the one hand, the owner of the land hoped to induce traders to establish themselves in the bazaar in the land by permitting them to erect buildings which would serve for their business and residential purposes it may reasonably be inferred on the other hand that persons proposing to establish business in this bazaar would put up substantial buildings only if

the structure. Evidence of previous landlord of the village in which the land is situate to the effect that he had always looked upon the tenants as permanent tenant is another important clue to the intention of the parties and when taken along with the known object in inducing the tenants to take up building sites in the bazaar, would clearly indicate that permanent tenancies were contemplated at the time of origin (*Agarwala J*)

NARAYAN NOY DEB BARMA
11 E C 891=68 O L J 481=A

—Possession—When could be de

The Court will grant a decree of landlord only when the person in trespasser and where there is no and the tenant. In other cases if the person in possession holds under a transfer by the tenant possession will be decreed only if abandonment is proved (*Pollock, J*) SINGHAI v SHREE HANUMANJI

1939 N L J 551

—Relationship—Creation of—Occupancy rights—

rights 'See' DEED — CONSTRUCTION — LEASE OR MORTGAGE 5 B R 335

—Relationship—Employer housing employees in his house for purpose of trade—Relationship of landlord and tenant—If created—Entry of stranger in house without employer's consent—If lawful—Onus—Trans pass

If employees are housed by the employer for the convenience of his trade in the houses built on his own land the relation between the employer and employees is not that of landlord and tenant. The employees are

garden or proving that his entry on such a fully justified lies on him. It is not enough for him

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that he entered the premises on the invitation of the employees living there (*Lobo, J*) DALMIA CEMENT, LTD v NARAINIDAS 185 I C 57=

A I R 1939 Sind 256

—Relationship—Entry of *bila tasfiya*—Indication

Where certain persons are recorded as holding plots of land *bila tasfiya* the entry can only at best show that they are holding the plots as tenants and not as under-proprietors (*Zia ul Hasan and Radh Krishna Srivastava JJ*) KANDHAYA BUX SINGH v THAKU RAIN SUKHRAJ KUER 1939 O W N 848=

1939 O A 690=1939 A W R (C O) 175=

184 I C 818=1939 R D 557=1939 O L R 660

—Relationship—Proprietor of land—If can also be tenant

It cannot be held that a proprietor can be a tenant under himself. It cannot be stated as a general proposition that a person cannot have two separate kinds of same piece of land. There is nothing to

ner of property from letting it out to a body of persons of whom he himself is one. Such a tenancy may well exist (*Rowland, J*) SARA DIBYA v GAURANGA CHARAN SAHU 5 C L T 41

—Relationship—Rent receipts granted as *sara barahakar*

Where after the death of the original tenant the landlord did not take *khaz* possession of his holding but continued to receive rents from a certain person for a

—If an agent he is not the tenant

to establish the relationship the terms of (*Wort, Ag*) SRINIBAS

1939 Pat 43

—Rent—Abatement—Rent suit against several tenants—Claim to abatement on account of deterioration of land made by one tenant only—If enures to all

Where in a rent suit against all the tenants of a holding one only out of them puts forward the plea that the tenants are entitled to an abatement of rent by

of of the

one who raises the plea (*Wort, J*) RAMESHWAR PERSHAD SINGH 170 I C 842= 5 B R 301=11 R P 418=A I R 1939 Pat 257

—Rent—Enhancement—Right of landlord—Objection to enhancement—Onus

It is settled law that a landlord unless precluded by any statutory prohibition or by any contract to the contrary is entitled to have the rent of his tenant enhanced from time to time and get rent according to current rate. Whether the landlord is a proprietor holding directly under the Government or a tenure

—If an agent he is not the tenant. It makes no difference, defeat the claim not enhanceable to his tenure or excludes enhance-

ment of rent (*Wort and Khaja Muhammad Noor, JJ*)

LANDLORD AND TENANT.

CHANDRA MOHAN MAJHI v. MIDNAPORE ZEMINDARY CO., LTD. 20 Pat L T. 185.

—Rent—Enhancement—Suit for—Parties—Non joinder—Effect on decree. See PRACTICE—PARTIES. 5 C L T. 6

—Rent—Enhancement—Tenant holding at variable rate of rent—Creation of under-tenure at rent fixed in perpetuity—Validity—Tenant's holding sold in execution of rent decree and purchased by landlord—Effect—Right to enhancement of rent.

Where a tenant agrees to accept a fixed rate of rent...

held on as favourable terms as his own. Where the tenant holding at a variable rate of rent contracts with his under-tenure-holder that the latter's rent should be fixed in perpetuity (as a permanent tenure), he does not thereby confer on him the status of a permanent tenure-holder at a fixed rate so far as the proprietor of the holding is concerned. The rent of the under-tenure-holder is liable to be varied at the instance of the proprietor. (*James and Rowland, J.J.*) ISWAR KRISHNA CHANDRAJEE THAKUR v. BRIJ BEHARI DAS 180 I C. 610—11 R.P. 518—5 B.R. 457= 20 Pat L T 318=A I R 1939 Pat 404

—Rent-free grant—Evidence—Long possession and

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let out for agricultural purposes. The Rent Act does not apply to the case. (*Akhta, S. M.*) JAI MANGAL PANDE v. MST. LAGNA LONIN. 1939 A.W.R. (B.R.) 24=1939 A.L.J. (Supp.) 35=1939 R.D. 243.

—Rent—Reduction—Agreement for—Onus—Acceptance of reduced rent for years—Effect of

The mere acceptance of a reduced rent, though it may amount to a full acquittance of rent for the particular year or years for which the rent was paid, cannot prove

that the rent is not a permanent nature. *v. SUCHITRA SUN-*

—Rent—Right to—Execution of qabuliyat by father of tenants—Effect—Lambardar, if entitled to the rent.

Where the father of the tenants had executed a qabuliyat in favour of the Zamindar, the rent is payable to the Zamindar and not to the lambardar. The estoppel created by the execution of the qabuliyat gives title to the Zamindar to be the receiver of the rent. (*Marth, S. M. and Akhta, J.M.*) MALKHAN SINGH v. NATTHU GIRAN 1939 R.D. 529=1939 A.W.R. (B.R.) 229.

—Rent—Sub-tenants—Reduction in rentals by tenant in-chief—Sub tenants if entitled to remissions.

When a tenant agrees to accept a fixed rate of rent...

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—Rent—Liability for—Cultivation in the agwara of a house—Presumption if any from entry in the revenue papers

Where cultivation is found to be carried on in the agwara of a house, it is only a petty garden cultivation in the courtyard in front of a house and because rent happened to be entered in the papers there is nothing to justify the presumption that this was agricultural land

under threat of dispossession from a third person attorns to him and so converts his possession into possession of the latter. The mere assertion even if this be a true assertion, by the third person that he has better title to the knowledge of the lessor and the lessee, or the mere institution by him of a suit for possession against the lessee, does not amount in law to an eviction by title paramount. It is essential that such person should tak

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possession or should be taken in the taken possession of the demised premises
Edley JJ AMRITA LAL OJHA
 SARKAR I L R (1938) 2 Cal 55C

11 R C 819 = A I

—*Rent—Suit for—Joint holding*

—*Suit for rent against one or more—Competency*

Every suit to recover money due on account of rent is in one sense a rent suit where several tenants are joint promisors such a suit can be instituted against one or more of them and decreed for the entire sum due (*Varma and Rowland, JJ*) I NDERJIT

SAHI DEO v MAHARAJA PRATAP UDAI NATH

DEO 18 Pat 378 = 5 B R 830 = 182 I C

12 R P 74 = 1939 P W N 641 = 20 P L T

A I R 1939 Pat

—*Rent—Suit for whole rent of holding against some only of the tenants—Maintainability* See CON TRACT ACT, S 43

17 Pat 662

—*Rent—Suspension of—Holding held at lump sum rent—Dispossession from certain plots—Right*

A I R 1939 Pat 356

—*Renunciation of tenancy—Right of tenant*

A tenant cannot renounce his tenancy if the landlord insists on treating him as a tenant. Where even after the execution of a release deed by a tenant in favour of his landlord in respect of his occupancy rights in the holding the landlord insists on treating him as his tenant and gives receipts for the rent of the holding in his name he cannot subsequently be heard to say that the tenant is not his tenant (*Harris C J and Agarwala J*) SHIVA PRASAD SINGH v BHAGWAN DAS AGARWALA

179 I C 400 = 11 R P 341 =

5 B R 231 = A I R 1939 Pat 180

—*Rights of tenant—Settlement of gairmanrua lands* See LIMITATION ACT, ART 32

181 I C 493

—*Shankalap—If under proprietary right*

A shankalap is not always an under proprietary right (*Zia ul Hasan and Hamilton JJ*)

LUCKNOW DIVISION v BITANA

181 I C 186 = 11 R O 283 = 193

1939 R D 259 = 1939 O L R 242 =

A I R

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—*Sir land—Tenant under sir—Status of—Conferment of occupancy rights—Procedure to be followed*

A tenant under sir is a non occupancy tenant and is not a subtenant. Until the zamindar ejects the non occupancy tenant holding under the sir the land is not

they are not claimed, and a tenant of sir becomes a tenant of the khalsa land (*Mekhta S M and Harper, J M*) MAKNU v MAHOMED HUSAIN KHAN

1939 R D 20 = 1939 A W R (B R) 127

—*Statutory tenancy—Lease in favour of wife sub*

landlord cannot disown his statutory tenant and treat him as subtenant of his wife (*Marsh, S M*) NAWAZISH ALI KHAN v UNI RAO

1939 A W R (B R) 179 = 1939 R D 414

—*Sub tenancy—Entry of one as a tenant in chief and another as sub-tenant—If evidence of sub letting—Holding originally joint—Status of such persons*

Where the holding was the joint holding of the ancestor's of the parties and one has been entered in the papers as a tenant in chief and the other as a sub tenant, where there is no evidence of any sub letting and the alleged sub tenants had been in possession for nearly 51 years, the mere entry cannot make him a sub-tenant. He should be entered along with the so called tenant in chief as occupancy tenants (*Mekhta S M and Harper J M*) JAGBANDHAN LOMAR v SURAJ NARAIN SINGH

1939 R D 11 =

1939 A W R (B R) 122

—*Creating under*

nure holder to land

—*Principles*

under tenure cannot

that under-tenure,

be in violation of the equitable person can be allowed to derogate

Such a surrender does not give

ord a cause of action to re enter

avoid the under tenure at once

(*Mohammad Noor, JJ*) CHANDRA

MOHAMMAD ZAFINDARY CO.

20 Pat L T 185.

—*Mortgage with possession—*

—*Mortgage*

ession does not become a

tenant at will as a matter of law on the extinction of the mortgage (*Dalip Singh J*) BOLA v CHHAJJU RAM

41 P L R 421 = 184 I C 664 =

A I R 1939 Lab 396

—*Tenancy in favour of family members—Nature of—Effect on persons in actual possession*

Tenancies which are created in favour of family members by titled magnates are not genuine tenancies.

with a plot of land (Mekhta S M and Harper, J M)

sirdars—Recorded sirdar in specific plots—If can eject—Principle underlying

It is an accepted principle that a recorded sirdar in specific plots is entitled to eject a purchaser from one of the joint sirdars as a trespasser. The purchaser can only hold on as a licensee. His place is in the samima Akrot and not in the khatauni because it is clear that he could not get possession over the specific area because on

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LAND TENURE.

mutation—Possession, value of

Unless a thekadar is shown to have had transferable rights, persons claiming under a will executed by the thekadar

strength

Court

to mutal

basis of possession (*Darling S.M*) PAKAM HANS

SINGH v. KALKA SINGH 1939 A.W.R. (B.R.) 11=

1939 E.D. 306.

—Under proprietary rights—Inference—Indications.

It may be that in certain cases the fixing of rent of

the land revenue plus a

dication to ascertain

granted But too mu

attached to it (*Zia*

COMMISSIONER, LUCK

14 Luck 624=

1939 C

1939

—Under proprietor of grove—Rights of—Superior

proprietor entitled to a share of

trees—If entitled to get an injunc

proprietor in respect of trees

sites to the controlling authority, *i.e.*, the inamdar in whom unoccupied house sites vest for that purpose No individual villager can be allowed to squat on the land

worth, *f*) CHINNA-

ASUBRAMANIA AIYAR,

= 1939 M.W.N. 207=

11 R 1939 Mad 409.

—"Jote"—Meaning of.

The word "Jote" by itself is an ambiguous word, which may mean a tenure or a holding. (*Mitter and Sen, J.J*) ABDUL LATIF v. NAWAB KHAIJEH HABIBULLA 69 C.L.J. 28= A.I.R. 1939 Cal 354

—Noabad Taluks—Incidents of—Cultivated and

tenant, subject only to a re adjustment of the rent at

12 E.O. 95=184 I.C. 272=1939 O.W.N. 916=

1939 O.L.R. 600=1939 A.W.R. (C.C.) 217=

1939 E.D. 593=A.I.R. 1939 Oudh 279

LAND TENURE — Dhols and Bhoia tenures—Nature of

Land held on Dholi tenure is rent free land granted

by the proprietors of a village for the b

mosque or shrine, or to a person for

and the grantee in such a case has to

specified duties of his office Bhoi

granted on a similar tenure but for

(*Ram Lal, J*) ZAHARYA MAL v. SHIB CHARAN

41 P.L.R. 672

—Inam—Whole inam village—Unoccupied house

sites—Controlling authority—Right of villagers in

respect of—Practice in Madras Presidency

In the case of a piece of village site in a v

village in which both the warams are ow

same person or persons, the very nature c

implies a controlling authority to regulate

occupation The recognised practice of tl

Presidency—excluding areas with a special revenue law,

such as Malabar—the control of unoccupied village site

land vests in the proprietor whoever he may be In

ryotwari area the control is exercised by the Govern-

ment in the revenue department by means of grant of

house sites pattas In zamindari areas that control is

exercised by the Zamindar In a shrotriem village not

falling under the Estates Land Act, the control of such

43 C.W.N. 1109.

—Service tenure—Occupancy raiyat at fixed rent

appointed jeth raiyat and allowed to deduct a fixed sum

out of rent payable—Holding if becomes grant burdened

with service—Resumability by landlord

The defendants' ancestor was an occupancy raiyat

an incident of the tenure, it was only the mode in which the rent payable was fixed.

Held, that it could not be inferred from these facts

that the holding was anything other than an ordinary

burdened with

o dispense with

ime. (*Harries,*

WARKA DAS v.

= 18 Pat 502=

O.P.T. 659=

1939 Pat 520

—Zabti bhogra—Assessment—If can be challenged in civil suit

Once the assessment is made and left unchallenged it

becomes binding on the co-sharer gaontias If no

steps are taken to contest the same in settlement, i

cannot be challenged in a civil suit and any part

among the co sharer gaontias does not put an en

LEASE.

—*Construction—Use of words like 'perpetual' and 'generation to generation'—Lease executed in settlement of dispute as to proprietary title—Nature of lease.*

Where a lease contains expressions like 'perpetual' and 'generation to generation', the fact that it was executed in consideration of the settlement of disputes as to proprietary title, is a strong circumstance in favour of holding that the transferor intended to transfer a heritable and transferable estate (*Zia ul Hasan and Radh Krishna Srivastava, J.J.*) **AMAR KRISHNA NARAIN SINGH v NAZIR HASAN** 1939 O.W.N. 825 = 1939 O.L.E. 563 = 1939 A.W.R. (C.C.) 160 = 183 I.C. 821 = 1939 R.D. 542 = 12 R.O. 67 = A.I.R. 1939 Oudh 257

—*Execution of—If can affect rights or status already acquired.*

Where between 1314 and 1328, 12 years' period had been put in, the subsequent execution of an 8 years' lease would not derogate from the status of the tenants already acquired prior to 1328 (*Maria, S. M. and Mehta, J.M.*) **MAHANGOO v. RAM KISHUN DAS** 1939 A.W.R. (B.R.) 113 = 1939 R.D. 437 =

of k

—*Permanent lease—Conditions for transfer—Fulfilment—Condition that lessee would remain liable for rent until relationship of landlord and tenant is established by transferee.*

It is quite possible to insert a stipulation in a permanent lease providing for the fulfilment of certain

landlord and the transferee,

Held, that the relation of landlord between the lessor and the transferee

(*See, J.*) **ABDUL RASHID v CHAUK KUMAR RAJ** 43 O.W.N. 935 = A.I.R. 1939 Cal 523

LEGAL PRACTITIONER See also (1) BAR COUNCILS ACT. (2) LEGAL PRACTITIONERS ACT.

—*Admission by—Point of law—Decree based on admission—Binding nature of.*

Although an admission by an Advocate on law is not binding upon a party, if on the basis of an admission a decree has been passed, the binding upon the party unless it is set aside by the procedure prescribed by law. (*Mahabhai, J.J.*) **BARABONI COAL CO. v. RAM CHANDRA MARWARI**.

181 I.C. 731 = 11 R.P. 625 = 2

A.I.R.

—*Advocate—Advocate for accused called as witness for prosecution—Right to appear for accused in case—Jurisdiction of Court to call on advocate to withdraw—Principles—Right of accused in criminal case to select advocate of his choice.*

An accused person is entitled to select the advocate whom he desires to appear for him and certainly the prosecution cannot fetter that choice merely by serving a subpoena on the advocate to appear as a witness. On the

LEGAL PRACTITIONER.

other hand the Court is bound to see that the administration of justice is not in any way embarrassed. If an advocate is called as a witness by the other side, it can safely be left to the good sense of the advocate to determine whether he can continue to appear as an advocate, or whether by doing so he will embarrass the Court or the client. If a Court comes to the conclusion that a trial will be embarrassed by the appearance of an advocate who has been called as a witness by the other side, and if, notwithstanding the Court's expression of its opinion, the advocate refuses to withdraw, in such a case the Court has inherent jurisdiction to require the advocate to withdraw. But the prosecution or the party calling the opposite party's advocate as a witness must in such a case establish to the satisfaction of the Court that the trial will be materially embarrassed if the advocate continues to appear as advocate for his client (*Baumont, C.J. and Wassooder, J.*) **EMPEROR v. DABU RAMA**, 181 I.C. 769 = 40 Cr. L.J. 568 (1) = 11 R.B. 351 (1) = 41 Bom L.R. 282 =

A.I.R. 1939 Bom 150.

—*Appearance—Power of Court to restrain—*

do so, cannot be gainsaid. But a very strong case must be made out before an order restraining a pleader from acting in a particular case is passed. The mere fact that the defence asserts that the pleader for the prosecution will be required as a witness for the defence, and that the Magistrate himself thinks that he will be a

question
(*See, J.*)

137 =
g. 342.

—*Authority of—Agreement to abide by oath—Offer of special oath to other side—Client—If bound.*

A pleader who holds a Vakalatnama which distinctly authorizes him to file a petition of compromise with or

1939 P.W.N. 192 = 20 P.L.T. 131 =
A.I.R. 1939 Pat 222.

—*Duties—Advocates and pleaders—No distinction.* Though the methods of appointment of advocates and higher or lower grade pleaders are different and the discipline by which they are controlled arises from different sources, their duties as representing their clients are similar and the principles in one case advisers ought to be a

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(*Roberts C J, Mya Bu and Mostly JJ*) TAJENDRA CHANDRA DHAR v TAJENDRA LAL GHOSH

1939 Rang LR 514=182 IC 77=11 RR 512=

AIR 1939 Rang 183 (SB)

—Duties—Appearance for opposite party in subsequent litigation

An advocate or pleader who has appeared in one party in a suit ought not to allow placed in the position in which there is suspicion whether well or ill founded that his knowledge of his client's case would be used by him on a subsequent occasion in appearing for another party against his original client. Hence a legal practitioner who has acted for one party in a dispute should not be allowed to act for the other party in subsequent litigation between them relating to or arising out of that dispute (*Roberts C J, Mya Bu and Mostly JJ*) TAJENDRA CHANDRA DHAR v TAJENDRA LAL GHOSH

1939 Rang LR 514=182 IC 77=11 RR 512=

AIR 1939 Rang 183 (SB)

—Duties—Duty to make suitable arrangements for conduct of case

Per *Sharpe J*—It is ordinarily the duty of an advocate to be present or to make suitable arrangements for the conduct of the case and the Courts are not to be inconvenienced by the postponement of cases until the proper advocate is available (*Roberts, C J and Dunkley J*) SAWARNAL v KUNJILAL

1939 Rang LR 102=160 IC 555=11 PD 410=

—Duties—
for her entering
nama—Duty to

It is exceedingly uncommon for pleaders to take the responsibility of entering into a compromise on the strength of the authority conferred by the vakalatnama particularly in the case of illiterate and pardanashin ladies. In all such cases counsel should personally satisfy himself by reference to the lady herself whether she is agreeable to the compromise or confession of judgment (*Yang C J and Ram Lal J*) UMRAO BEGUM v RAHMAT ILAHI AIR (1939) Lah 433=41 PLR 843=AIR 1939 Lah 439

—Duties—Preparation of cases—Supply of documents—Duty of clients.

It is incumbent on Counsel to prepare their cases before they come to Court and the time of the Court should not be taken up by a search for relevant passages in the record. It is the duty of clients to supply certified copies of all relevant records to enable the

1939 RD 115=AIR 1939 All 303

—Initiation of proceedings under Legal Practitioners Act maliciously—Suit for malicious prosecution—Maintainability See TORT—MALICIOUS PROSECUTION 1938 ALJ 1219=

1938 A WR (HC) 861

—Lien—Solicitor's lien—Property not in possession of solicitor—Insolvency of client—Effect of—Press demy Towns Insolvency Act, St 17 and 52

Under the Indian Law as under the English Common Law a solicitor has a lien for his unpaid property procured for his client by his exertion for instance money payable to the client. It does not matter whether or not he has got actual possession of the property over which he proposes to exercise his lien. The insolvency of the client makes no difference to his rights (*Sen, J*)

LEGAL PRACTITIONER

GANESH CHUNDER MULLICK v NARAYANI DASSI
ILR (1939) 1 Cal 212=43 CWN 290.

—Misconduct—Bribery or attempted bribery by advocate—Reinstatement after disbarment—Practice
Bribery or attempted bribery by advocate is grossest

and is only purged after strenuous efforts and after a long period during which he has tried his best to reinstate himself in society. No doubt the door is not inevitably and permanently shut to persons who are disbarred they may after the lapse of a suitable period of time, provided their conduct has been uniformly satisfactory ultimately reach reinstatement. But reinstatement is not a matter of course and it is not something which can be hoped for within a brief period of time. (*Roberts, C J Mya Bu and Mostly JJ*) UAN ADVOCATE, In re 1939 Rang LR 213=

180 IC 902(2)=11 RR 442=

AIR 1939 Rang 142 (SB)

—Pleater—Power to enter into compromise—Authority to sign compromise petition—If confers power to enter into compromise without consent of client

Where a vakalatnama given by a party to his pleader merely authorises the latter to sign a compromise petition and does not give any specific authority to the

41 Bom LR 991=AIR 1939 Bom 490

—Powers—Acts required for proper conduct of trial—Implied authority

A counsel appearing in the case from the very nature of his duties and for the purposes of a proper conduct of the case must be deemed to have implied authority to admit or deny a document to press or withdraw an issue in the case, to examine a witness or call no witness and do such other acts which are required for the proper management and conduct of the trial (*Zia ul Hasan and Radh Krishna Srinivasa JJ*) AMAR KRISHNA NARAIN INCH v NAZIR HASAN

183 IC 821=1939 OWN 825=1939 OLR 563=

1939 A WR (CC) 160=1939 RD 542=

12 RO 67=AIR 1939 Oudh 257.

—Right to fees—Parties to reference agreeing in award to pay certain amount to legal adviser of arbitrator as fees—Legal adviser's right to sue for fees

Where an advocate acted as legal adviser of the arbitrator and the parties agreed in the award to pay certain amount to the advocate as his fees and the latter sued them for the same

Held, that the advocate could not succeed on the principle of trust agency estoppel or privity of contract (*Davis J C and Tyahis J*) TARACHAND KHIMAN DAS v SYED ABDUL RAZAK SHAH

ILR (1939) Kar 422=182 IC 226=12 RS 4=

AIR 1939 Sind 125.

—Solicitor—Lien of—If prevails against parties' right of set off—Costs due by one party to another—Set off against decree amount payable by latter to former

really an equity

all the equities

other party or

parties interested in the property over which the lien is claimed. An attorney has no higher rights than his client. A plaintiff's right to set off costs payable to him

LEGAL PRACTITIONER.

by the defendant against the sum found due from him to the defendant on the taking of accounts in the same suit is not affected by the defendant's solicitor's lien. The Courts in India have complete discretion to allow a set off, whether in the same action or in different actions, and it extends to the setting off of costs and also in a proper case to the setting off of damages against costs and vice versa. The discretion has to be exercised judicially, having regard to the facts and circumstances of each case considered by the Court. The Court are not bound by the attorney whose lien is sought to be set off, because as between the client and the attorney there can hardly be a ground for setting off. After a set off has already been allowed, the client's lien is not protected. (*Wadia, J.*) ANWAR F J LAL JEE v EBRAHIM F. J. LALJEE. 41 Bom L.R. 1091 = A.I.R. 1939 Bom 518.

Solicitor and client—Agreement for reduced fee—Stipulation for payment of full taxed costs in case of success—Validity—Disputes under O 45, R 7, C P Code—Payment out to solicitor of respondent in satisfaction of fees due—Powers of Court.

Where undue influence is not apparent and a solicitor has agreed to accept taxed costs in the event of success so as to lighten the burden on his client in the event of failure, the agreement cannot be looked upon with disfavour and the Court will respect the terms of such an agreement of employment. Where a solicitor for a respondent to a Privy Council appeal agrees to accept a reduced fee, stipulating that in the event of the client's success in the appeal he should be paid the full taxed costs that agreement cannot be regarded as invalid or unenforceable either in practice or in law. It is competent to the solicitor to recover the amount of his bill of costs from the amount of the set off by the appellant as a condition precedent. R 7, C P Code. The High Court.

183 IC 78 = 12 E.B. 57 = 41 Bom L.R. 410 = A.I.R. 1939 Bom 250.

Unprofessional conduct—Advocate struck off the rolls for misappropriation—Application for readmission—Considerations for Court—Grounds for reinstatement—Duty of Court.

Before the Court could readmit an Advocate who

he has become worthy to act as an Advocate. His readmission does not depend on the fact that he has been suspended or struck off the rolls for misappropriation. In deciding such matters the Court has to consider the public, and where the Advocate has been guilty of misappropriation it must be shown that the likelihood of such an offence being committed is small. (*Leach C. J., Aickin and Krishnaswami Ayyangar J.J.*) SUNDARAM In re. 1939 M.W.N. 1037 = 50 L.W. 566 = A.I.R. 1939 Mad 917 = (1939) 2 M.L.J. 630 (F.R.)

Unprofessional conduct—Advocate struck off the roll for misappropriation of client's money—Subsequent reinstatement—Power of High Court—Grounds for reinstatement.

LEGAL PRACTITIONERS' ACT (1879), S. 13.

While misappropriation by a legal practitioner of monies belonging to his client is a very grave act of professional misconduct which would not make it possible to allow him to continue practising in the profession, the Court is not precluded from reinstating the practitioner if he is found to be a fit person to be allowed to practise.

ment.

If a pleader is found guilty of endeavouring to appear on behalf of a person by whom he had never been instructed and seeks to justify his conduct by the production of a forged document, it would not be a matter for suspension for a month or a year; he would be totally unfit to exercise the responsible duties of a pleader and would have to be struck off the rolls of pleaders forthwith. (*Roberts, C.J. and Dankley J.*) MAUNG TUN SHIN, In re. 183 IC 766 = 12 E.B. 115 = A.I.R. 1939 Rang. 312.

S 13—Misconduct—Pleader accepting vakalatnama but failing to appear at hearing.

The acceptance of a vakalatnama in a suit by a legal practitioner entails a duty upon him to attend the court on the day fixed for the hearing, unless it is proved that his obligations towards his client entailed by the acceptance of the vakalatnama were limited by a special arrangement accompanying such acceptance. Consequently, the acceptance of a vakalatnama by a pleader without appearing at the hearing of the suit is a breach of the provisions of the Legal Practitioners' Act, 1879, S. 13.

J.J.) PURKHARAM v PIRTHIRAJ.

1939 M.L.R. 16 (C)

S 13—Professional misconduct—Pleader with-drawing money for client and retaining same as loan by arrangement with client—Priety of—Non payment when demanded—If guilty of fraudulent or grossly improper conduct.

Where the relationship between legal practitioner and his client becomes that of debtor and creditor, the pleader is bound to repay the money as and when demanded. If he fails to do so, he is guilty of professional misconduct. It is essential in cases where the relationship of pleader and client has been changed to one of debtor and creditor, that the pleader should give evidence of such relationship to the Court. Once the relationship is established, the pleader is bound to repay the money on demand. To borrow money from the client who places confidence in the pleader when the latter is aware that it would be extremely difficult for him to repay it is most reprehensible. No lawyer should ever borrow money from a client unless he is sure that he can repay it when the client demands repayment. (*Harriott, C.J., Wort and Khasa Mahomed Noor, J.J.*) KASHI NATH RATHO v. U.

drawn up. It is essential in cases where the relationship of pleader and client has been changed to one of debtor and creditor, that the pleader should give evidence of such relationship to the Court. Once the relationship is established, the pleader is bound to repay the money on demand. To borrow money from the client who places confidence in the pleader when the latter is aware that it would be extremely difficult for him to repay it is most reprehensible. No lawyer should ever borrow money from a client unless he is sure that he can repay it when the client demands repayment. (*Harriott, C.J., Wort and Khasa Mahomed Noor, J.J.*) KASHI NATH RATHO v. U.

LEGAL PRACTITIONERS ACT (1879), S 13

PATNAIK 18 Pat 580=5 BR 795=
182 IC 645=12 RP 40=20 PLT 607=
40 Cr LJ 687=1939 PWN 620=
AIR 1939 Pat 343 (SB)

—S 13 (b)—Misconduct—Failure to make careful arrangements in a case.

The words of S 13 (b) are as strong words as could well be imagined, and they plainly import in all cases moral turpitude to the pleader whose conduct is impugned. Although of course a pleader who is habitually

pleader who was engaged to defend an accused asked for a long adjournment. He was, in conformity with his application granted a comparatively long adjournment up to certain date but when that date arrived he failed to put in an appearance at the Magistrate's Court. In the meantime he had asked a pleader of some standing to accept the case for him. The accused told the substitute not to conduct the case.

Held that there was no ground for suggesting that the conduct of the pleader in the circumstances was either fraudulent or

which deserve

Sharpe J)

In re

—Ss 13

—Necessity for—Inference from suspicion or error of judgment—If justified

Charges of professional misconduct must be clearly proved and should not be inferred from mere ground for suspicion however reasonable or what may be mere error of judgment or indiscretion. Proving facts and circumstances giving rise to grave suspicion is not sufficient to establish a charge of misconduct.

(*Harries C J, West*

JJ)

—S 14—Inquiry under

—Necessity—Omission to formulate—If fatal—Evidence—Application of

An inquiry in a serious case (such as professional misconduct on the part of a pleader) should proceed on formulated charges, not only in fairness to the person charged with professional misconduct, but in order that evidence may relevantly bear on the particular issues. Further evidence should be carefully taken and judged according to the ordinary standards of proof. But failure to formulate charges is not fatal to the proceedings when it has not resulted in prejudice to the pleader.

LETTERS PATENT (Bombay), Cl 15

case (*Harries, C J and Rowland, J*) MANMATHA NATH MULLICK v JITENDRA NATH MUKERJI

18 Pat 213=5 CLT 34=20 Pat LT 352.

LETTERS PATENT (Bombay) Cl 12—Jurisdiction—Defendants having business outside Bombay keeping office and clerk in Bombay—Loans raised and goods purchased in Bombay—Accounts kept in Bombay by clerk—If carrying on business—Hundis headed 'Bombay' drawn outside but delivered to payees in Bombay and endorsed by latter in Bombay—Suit in

ed accounts as to the loans raised by the defendants, interest and repayments. Defendants, when they came to Bombay stayed in the room off and on. Some goods and machinery were purchased by the clerk in Bombay under the defendant's instruction. Borrowing was an essential element in their business, and in the course of the business defendants raised money on eight hundis which were drawn and signed outside Bombay. But the word 'Bombay' and the date were written on the top of each hundi. After signature the hundis were

whole cause of action arose in Bombay within the jurisdiction of the High Court.

Held (1) that the defendants carried on business in Bombay within the jurisdiction of the High Court. (2) that the whole cause of action arose in Bombay because though the signatures to the hundis were affixed outside Bombay the hundis became complete only when they

AIR 1939 Bom 461

—(Bombay) Cl 12—Scope—Suit after leave of Court—Amendment altering suit by six persons into suit by one of them—Fresh leave after amendment—Necessity

Leave granted for the institution of a suit under Cl 12 of the Letters Patent is confined to the cause of action or causes of action set forward in the plaint at the time the leave is granted; hence the plaint cannot be amended so as to alter the cause of action. If an amendment, which would alter the cause of action is made it necessarily follows that fresh leave should be obtained in

Where a suit by six persons was instituted to recover a sum of money under Cl 12, but so as to make it a suit by one person who originally were six persons and who had fresh leave of Court granted.

ANKAR LAL

184 IC 520=12 RB 183=41 Bom LR 536=

AIR 1939 Bom 345

—(Bombay) Cl 15—Judgment—Execution of decree—Order refusing to direct value of property to be stated in proclamation of sale—Appeal—Sic C P Code S 47

41 Bom LR 328

fees payable

Where several pleaders are engaged by a party to a litigation in the absence of any agreement as to the amount of their fees each pleader is entitled to his fees up to the full fee assessed at the hearing. It is not the rule that all of them should divide among them a single hearing fee of the amount assessed as pleader's fee in the

LETTERS PATENT (Calcutta), Cl. 12.

—(Calcutta), Cl. 12—*Leave granted subsequent to*
High Court to entertain suit.
 At the time of the presentation of the plaint is subsequently granted, such leave dates back to the date of presentation of the plaint and the suit must be deemed to have been instituted on that date (*Lort Williams, J.*)
CHANI

part of
High Court to entertain suit.

Where part of the property in a mortgage suit, however small, is situated within the local limits of the ordinary original jurisdiction of the High Court, leave can properly be obtained under cl. 12 of the charter and the High Court has jurisdiction to entertain the suit, if such property is in fact a real property and an effective portion of the security. It is immaterial that its value is comparatively small and the mortgagee has not hitherto availed himself of its potentialities, provided it has an intrinsic value and is capable of use and enjoyment (*McNair, J.*) **HRISHI KESH V. JITENDRA NATH**

43 C.W.N. 365

—(Calcutta), Cl. 15—*Judgment—Order granting revocation of patent—Appeal—Patents and Designs, Act, S. 25*

to the provisions of Cl. 15 of the Letters Patent, proceedings for revocation of a patent may be regarded as being upon the same footing as those in a suit *inter partes*.

Per *Panckridge, J.*—Orders are not excluded as such from the ambit of the term "judgment" as used in cl. 15 of the Letters Patent (*Costello and Panckridge, Jj.*)
ERNEST BRUNO NIER V. GEORGE REINHART

43 C.W.N. 697

—(Calcutta), Cl. 41—*Certificate under—Grant of*
Conditions

In order to succeed in an application to the High Court for a certificate under Cl. 41 of the Letters Patent, the applicant must bring himself within the principles and the conditions sought to be Judicial Council that there were very special and exceptional circumstances in the case. It would not be sufficient merely to come to the conclusion that there was some misdirection

—(Madras), Cl. 12—*Jurisdiction—Cause of action—Contract—Offer by telegram—Despatch of telegram—If part of cause of action—Contract for sale of goods F. O. R. Hyderabad—Offer by telegram sent from Madras—Acceptance in Hyderabad—Goods found inferior—Rejection notified by letter from Madras—Suit for damages—Jurisdiction*

The posting of an offer or the despatch by telegram of an offer from a particular place cannot be regarded as part of the cause of action for a suit for damages for

LETTERS PATENT (Nag.)

breach of contract. The offer is made at the place where it is received and if it is made by post or telegram, the place of despatch is not a material factor. Appellants, a firm of hide merchants in Hyderabad, Sind, telegraphed to the respondent, a merchant carrying on business at Madras and Madhavaram, offering to sell him 5,000 sheep hides of a certain quality at Rs 128 per 100 skins, delivery to be given at a railway station in Hyderabad. The respondent by a telegram of the same

station, and the respondent was bound to take delivery at Hyderabad. At the request of the respondent the goods were forwarded to Madras *via* Karachi and the consignment on arrival was taken to the respondent's tannery at Madhavaram where they were unpacked and inspected. The respondent considered that the goods were of inferior quality and decided to reject them, which he did by a letter posted from Madras. The appellants did not agree, and the respondent filed a suit for damages for breach of contract on the original side of the High Court of Madras, alleging that part of the cause of action arose in Madras.

Held, (1) that the fact that the respondent sent his offer by telegram from Madras did not mean that a part of the cause of action arose in Madras, (2) that though the rejection of the goods formed a part of the cause of action, the place of rejection was not material, were material, it was not Madras but

(3) that since the rejection had to be given in Hyderabad where the letter of rejection was received, and the posting of the letter in Madras did not make Madras the place of rejection, and (4) since no part of the cause of action arose in Madras, the High Court of Madras had no jurisdiction to try the suit under cl. 12 of the Letters Patent. (*Leach, C. J. and Kunhi Raman, J.*) **AHMAD BUX ALLA JOYAYA V. FAZAL KARIM**

50 L.W. 597=1939 M.W.N. 1171.

—(Madras), Cl. 15—*Order under S. 75 (3), Provincial Insolvency Act—Refusal to grant leave to appeal—Appealability*

There is no appeal from an order refusing to grant leave under Cl. 15 of the Letters Patent, and an order

KATAYYA V. OFFICIAL RECEIVER ANANTAPUR
 50 L.W. 202=1939 M.W.N. 734=
 A.I.R. 1939 Mad. 800=(1939) 2 M.L.J. 414.

and 40—Construction and
 of Income tax under
 Act, to state a case to the
 High Court—Order direct-

—(Nag.)—*Appeal under—Limitation—Computation—Exclusion of holidays*

Appeals under the Letters Patent may well be held to be out of time if not filed within 30 days—the question whether in case of holidays intervening, such time could be excluded was left open and not decided. (*Stone, C.*

LETTERS PATENT (Nag), CI 10

J and Bose, J) SECRETARY OF STATE v MST GEETA I L R (1939) Nag 124=182 IC 970-12 R N 37=1939 N L J 63=A I R 1939 Nag 122
—CI 10—'Judgment' High Court's decision in appeal against award under Workmen's Compensation Act

Where a Judge of the High Court decides an appeal against an award under the Workmen's Compensation Act, there is no judgment within the meaning of CI 10 of the Letters Patent from which an appeal could be preferred. There is only an award made pursuant to the provisions of the Workmen's Compensation Act. This does not however prevent a Judge from referring any matter of importance or difficulty to a Bench (*Stone, C J and Bose, J*) SECRETARY OF STATE v MST GEETA I L R (1939) Nag 124=182 IC 970=12 R N 37=1939 N L J 63=A I R 1939 Nag 122

—(Nagpur) CIs 10 and 27 and Rules framed by High Court R 10—Refusal of leave—Second application, if tier

When once a Judge has refused leave to appeal under CI 10 of the Letters Patent R 10 of the rule framed under the powers conferred by CI 27 precludes the possibility of a second application to the same Judge. No subsequent application is entertainable (*Grille and Niyogi JJ*) MANIKLAL v BHIKAMCHAND 1939 N L J 535

—(Patna) CI 10—Scope of from decision of single Judge in its entertainability—Leave to appeal refuse second appeal—Effect—High Court conflicts with Letters Patent

Under CI 10 of the Letters Patent (Patna) as amended in 1928 an appeal from a judgment of a single Judge delivered in a second appeal will only lie in cases where the single Judge concerned has granted leave to appeal

(*Harris, C J and Agarwala, J*) MALI RAM v RAM GOBIND SAH 183 IC 416=5 B R 943=

12 R P 149=1939 P W N 297=

20 Pat LT 404=A I R 1939 Pat 425

—(Rangoon), CI 13—Grant of certificate—Practice

The practice of Rangoon High Court is to grant certificates under CI 13 of the Letters Patent only in cases in which doubtful questions of law or procedure exist which deserve reconsideration and this practice is sound in principle in view of the fact that questions of fact cannot constitute valid grounds even of a second appeal under the Code (*Mysa Bu and Sharfe JJ*) MA LON v MA MYA MAY 179 IC 916=

11 R R 363=A I R 1939 Rang 59

—(Rangoon), CI 13—Grant of certificate—Principles

A certificate under CI 13 of the Letters Patent should

LIMITATION ACT (1908), S

LIMITATION—Applicability to defences

It is not the law that limitation can never affect a plea urged in defence. Where the plea rests on a right which the defendant had no occasion to urge until his possession was attacked limitation would not ordinarily affect his defence but when his defence raises a plea of some inchoate or imperfect right the establishment of which would depend upon a suit within a particular time he should not be allowed to urge that defence if the suit which has not been brought would at the time when he urged the defence have been time-barred (*Wadsworth, J*) KRISHNA AIVAR v SUBBA RENDIAK 48 L W 657=1939 M W N 690=A I R 1939 Mad 678=(1939) 1 M L J 770

—General principles outside the act—Courts if can take note of and apply

The Courts in India are bound by the specific provisions of the Limitation Act and are not permitted to move outside the ambit of those provisions. There is no place in the law of limitation—in India for a general principle of limitation. It is not permissible to the Court to discover in the provisions of the Limitation Act general principles and to apply these principles to cases which are not specifically provided for by the Act itself

only to the plaintiff

title of the Limitation Act tied down to the statements in the plaint. In order to determine it is the duty of the Court to consider the facts and circumstances admitted and proved in the case (*Hamilton and Radha Krishna JJ*) JAI MANGAL TEWARI v HINDUPUR SA 1939 A W R 1000=

presented suit—If continuation of first suit—Limitation

Where a plaintiff in a suit presented within the period of limitation is returned by the Court for want of pecuniary jurisdiction and the plaintiff if reduced in its scope in order to get over the difficulty of want of jurisdiction and re-presented to the same Court on a date on which a new suit would be barred by limitation, it may be treated as a continuation of the previous suit, the Court returning the plaint has the power to receive the plaint with a reduced scope on re-presentation (*Wadsworth, J*) CHENDRAYAR v SEETHANNA 49 L W 25=1939 M W N 449=A I R 1939 Mad 397

—S 3—Plea of limitation not pleaded or raised in trial Court—Plea raised for first time in appeal—Duty of Court to notice same

Though limitation is not pleaded in the written state

LIMITATION ACT (1908), S. 3.

... Date 33, ... 784

... required by O 45, R. 7 (1), C. P. Code, as applied to ... does not move the Court to do

Agarwala, JJ)
GIRDHARI LAL

20 P.L.T. 905 = A.I.R. 1939 Pat 667 (x B)

—Ss 4 and 20—Payment beyond the date of execution of promissory note—Acp to extend period.

Where an alleged payment is made at 3 years of the execution of a promissory visions of S 4 of the Limitation Act cannot to extend the prescribed period under S 21 (Bennet and Verma, JJ) SHYAM PR

AUTAR SINGH 181 I.O. 899 = 11 R.A. 621 = 1939 A.W.R. (H.C.) 153 = A.I.R. 1939 All 252

—S 5—Applicability—Applications to set aside sales under C. P. Code

S 5 of the Limitation Act does not apply to applications under C. P. Code

—S 5—Application of—Minors.

Minority is a factor to be taken into considering circumstances which justify th of S 5. Applications for the extension of S. 5 have to be more liberally construed minors than other litigants. (Young, C. J. and Ram Lal, J.) UMRAO BEGUM v. RAHMAT ILAHI

I.L.R. (1939) Lah 433 = 41 P.L.R. 813 = A.I.R. 1939 Lah 439

—S 5—Mistaken advice of Counsel—Extension of time if justified.

The mistaken advice of counsel is not sufficient to justify extension of time under S 5 of the Limitation Act, unless the advice was given in good

entirely to him to take the necessary steps, he take full responsibility for the acts of the lawyer. He cannot claim to have acted "in good faith" in filing the appeal unless the lawyer so acted. If the lawyer acted without due care and attention and filed the appeal in the wrong Court, the appellant cannot claim the benefit

Y D 1949—17

LIMITATION ACT (1908), S. 10.

of S. 5 of the Limitation Act. (Mackney, J.) R.M.A.L. FIRM v. KO SHAN. 1939 Rang L.R. 639.

—S. 5—Sufficient cause—Appeal under S. 476 B—Delay in filing—Excuse of. See C.R. P. CODE, S. 476-B

A.I.R. 1939 Sind 78, period fixed by S. 48, C.P. S. 48 & LIMITATION ACT, 1939 N.L.J. 387.

applicability—Marumakkathayam

karnavan and adult member—Karnavan acting as guardian of minor member also—Suit by latter within three years of his coming of age—

14—1—1913, by the havazhi-tarwad, his hild of 4 years, the navan as guardian, niece was in sole The gift came of age in thin three years of the gift deed, imsed karnavan as a

defendant to the suit

—S 6—"Minor"—Child in womb

Although under certain system of law, such as Hindu Law, a child *en ventre sa mere* is by a legal fiction and for certain purposes considered to be born in the sense that he has a right of inheritance in his father's property such a fiction does not govern the rule laid down by the law of limitation. Under the law of limitation, minority begins at the date of birth and not at the date of conception. Where therefore a person challenging an alienation of ancestral property was in mother's womb

—Ss 9 and 15—Judgment-debtor subsequent to

such case can be removed by the decree-holder himself

has been judgment-debtor, the execution begins to run, which cannot be suspended at disability. Moreover, the disability in such case can be removed by the decree-holder himself

15 cannot poss. SHAN v. FATEH

12 B.L. 238 = 41 P.L.R. 799 = A.I.R. 1939 Lah 270.

—S. 10—Applicability—"Constructive trust"—Registered sale deed—Part of sale price left with vendor for payment of son of vendor after he becomes major—Suit for amount from vendor—Limitation.

LIMITATION ACT (1908), S. 10.

Creation—Essential—Property transferred by owner to another for good management for term of years—Transferee given power to sell with consent of owner—Power reserved to owner to sell or mortgage with consent of transferee—Suit for accounts—Limitation—Agency

A trust, as defined by S 3 of the Trusts Act, contemplates that the trustee is the legal owner of the trust property, and before there can be a trust, the "trustee" must be the owner, that is, there must be a transfer of the property to the trust before a trust can be created. Where a document transfers property to a person and he is entrusted with the management of the property of the executants, who are unable to manage the property conveniently for a fixed period, and he is also given certain powers, such as to transact all the business of

against the transferee must be regarded as one brought against an agent for account falling under Art 89 of the Limitation Act and is not governed by S. 10 of the Limitation Act (*Harries, C. J. and Rowland, J.*) *KAMIRUDDIN KHAN v BADRUNNISA BIBI* 5 CLT 18

—S 10—Applicability—Trust declared

villages, entitled as such to certain fees and emoluments out of the revenues of those villages. These were collected for him by the defendants who were *arajah gumalistas* whose office was hereditary and who were

LIMITATION ACT (1908), S 12.

Macklin, J.J.

—Ss 12 to 25—Rules as to computation of period of limitation—If applies to periods of limitation provided by other Acts

Per Iqbal Ahmed, J.—The rules as to computation of period of limitation laid down in Part III of the Act are not intended by the Legislature to apply only to periods of limitation prescribed by the Schedule but apply also to periods of limitation provided for by other enactments (*Thom, C. J., Iqbal Ahmad and Basgai, J.J.*) *DURAG PAL SINGH v PANCHAM SINGH*

LLR (1939) All 647=182LC 242=12 RA 98=
1939 OLR 472=1939 AWR (HC) 498=
1939 AT 750=AT 1939 411 403 (FB)

judgment and

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in application
is not, there
the date of
nature of the
decree has
C. J. and
AUNG YAN
g LR 686.

—S 12—Period between signing of judgment and of decree—Deduction of—Decree signed after limitation.

In computing the period of limitation for filing an appeal, the time between the signing of the judgment and the signing of the decree must be deducted, although the decree is signed and the application for a copy of judgment and decree is filed within the period of limitation (*Sen, J.*) *SARAT CHAND W. N. 1139=*
AIR 1939 Cal 711.

—Time spent in obtaining copy of first

—S 12 (2) and (3)—Application for leave to appeal—Time for obtaining copy of judgment—If can be excluded.

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LIMITATION ACT (1908), S. 12.

In computing the period of limitation for an application for leave to appeal, the time requisite for obtaining a copy of the judgment cannot be excluded (*Jussien and Din Mohammed, JJ*) **PUNJAB CO-OPERATIVE BANK, LTD. AMRITSAR v. PUNJAB NATIONAL BANK, LTD. AMRITSAR** 1 L.R. (1939) Lah 156 = 179 I.C. 912 = 11 R.L. 651 = 41 P.L.R. 152 = A.I.R. 1939 Lah 43

—S. 12 (2)—*Computation of time—Days to be excluded—Copy applied for on the day of delivery of judgment—That day, if can be excluded.*

In computing the period of limitation prescribed for an appeal two periods are to be excluded. They are (1) the day on which the judgment is pronounced and (2) the time (i.e.) the days requisite for obtaining copy of the decree. These two are distinct and separate in their purpose. It cannot be contended that the day on which an application for copy is made is not a day requisite for obtaining the copy. Therefore it is clear that an appellant is entitled to a deduction of the number of days beginning with the day on which he applies for, to the day on which he obtains the copy, from the number of clear days of limitation prescribed by statute. It may be that in an exceptional case, where the copy is

182 I.C. 662 = 12 R.N. 24 = 1939 N.L.J. 173 = A.I.R. 1939 Nag 150

—S. 14—*Applicability—Conditions—Identity of cause of action in the two s. ejectment and mesne profits in occupancy right in tenant presentation to Revenue Co Revenue Court—If sued by in Civil Court*

The three essential requisites of S. 14 of the Limitation Act are of action, (2) good faith of the plaintiff, and (3) absence of jurisdiction or other cause of a like nature in the Court which entertained the prior litigation. A

based essentially on trespass, where a prior suit for possession and mesne profits presented to a Civil Court is returned by it for presentation to the revenue Court on the finding that the defendant was an occupancy raiyat not liable to ejectment, and the suit is thereupon re-presented to the Revenue Court, after being amended

LIMITATION ACT (1908), S. 14.

Limitation Act. A person who recklessly disregards the provisions of O. 21, R. 16, C. P. Code, and starts to execute a decree without any authority from the Court which passed it, cannot be said to be prosecuting the execution proceeding in "good faith," so as to entitle him to the exclusion of the time spent by him in that proceeding in computing the period of limitation for an application by him to the Court which passed the decree under O. 21, R. 16, C. P. Code, and to get over the bar of limitation. (*Lokur, J.*) **BRIJMOHANDAS DAMODAR-DAS v. SADASHIV LAXMAN**, 41 Bom L.R. 1190.

—S. 14—*Applicability—Proceedings under Child Marriage Restraint Act* *See* CHILD MARRIAGE RESTRAINT ACT, S. 9 49 L.W. 547 (1).

—S. 14—*Good faith—Choice of plaintiff to file suit in either of two Courts—Plaintiff's choosing Court inconsistent to defendant—Right to exclusion of time.*

Plaintiff who has a right to institute a suit in more than one Court is not bound to consider the convenience of his opponent in making his choice. If the unfortunate effect of that choice is to cause inconvenience to the defendant, it does not constitute lack of good faith on the part of the plaintiff in the sense in which that phrase is used in S. 14 (*Wort and Agarwal, JJ.*) **K. L. AGARWALA v. JANISTHA LAL**, 182 I.C. 632 = 12 R.P. 36 = 5 B.R. 792 = 20 P.L.T. 893 = A.I.R. 1939 Pat. 86.

—*Plaint returned for presentation to proper Court—Plaintiff filing appeal against order—Right to deduction of time*

Where a plaintiff, who filed his suit at R, and whose plaint is returned by the Court at R for presentation to

A.I.R. 1939 Lah. 47.

—S. 14—*"Unable to entertain it"—Interpretation—Plaintiff instituting fresh suit after withdrawing to benefit of section—C.P. Code,*

unable to entertain it" which occurs in S. 14 of the Limitation Act does not merely mean that the Court has expressed its opinion that there is defect regarding jurisdiction or otherwise, but the Court must actually by its order terminate the litigation on the ground of defect of jurisdiction or other causes of a like nature. Consequently a plaintiff who withdraws a

drawn is to be ignored altogether and deemed non-existent for the purpose of considering the period of limitation for the fresh suit. (*Mukherjee and Latifur Rahman, JJ.*) **MOHANLAL BAHETI v. MOULVI TAEI-ZUDDIN AHMED** 1 L.R. (1939) 2 Cal 316 = 43 C.W.N. 1074 = 184 I.C. 631 = 12 R.C. 256 = 69 C.L.J. 540 = A.I.R. 1939 Cal. 625.

—S. 14 (1)—*Other cause of a like nature—Leave granted to file suit subsequently recalled—Exclusion of time*

Where the jurisdiction of a Court to entertain a particular suit depends upon leave being granted by it

SATYANARAYANAMURTHY v. MAHARAJA OF PITHAPUR, 50 L.W. 139 = A.I.R. 1939 Mad 721 = (1939) 2 M.L.J. 329

—S. 14—*Applicability—Exclusion of time—Good faith—Meaning of—Reckless disregard of O. 21, R. 16, C.P. Code—Execution of decree without order of Court which passed the decree under O. 21, R. 16—If presentia in good faith*

An applicant who takes a proceeding contrary to a clearly expressed provision of law cannot be regarded as prosecuting a civil proceeding in "good faith" within the meaning of S. 14 (2) of the

LIMITATION ACT (1908), S. 14.

be excluded under S. 14 (1) or (2) *re-allowing*
 KALURAM AGARWALA v JANINI *other*
 182 I C 632 = 12 R. *Hence*
 20 P L T 893 = *should*

—S 14 (1)—Partition suit—Referen-
 rator after framing of issues—No issue of
 manner of division—Arbitrator affecting
 some only of properties with consent of par-
 tiffs creating incomplete partition as binding and enfor-
 cible in suit—Defendant contending contra—Prelimi-
 nary decree passed in accordance with award—Appellate
 Court holding partition binding but not enforceable in
 partition suit—Suit to enforce award—Limitation—
 Exclusion of time up to date of appellate decree

In a partition suit after the framing of issues, none

ed in this way but no agreement as to the allocation of
 the remainder could be arrived at. In these circum-

ed the whole of the property

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DO L W 108-43 C 14 140
 AIR 1939 PC 128 (PC)

—S 14 Expln I—Computation of time—Return
 of plaint for presentation to proper Court—What is the
 "date on which the proceedings ended"

When a Court records an order that a plaint should
 be returned for presentation to the proper Court the
 proceedings in that Court do not necessarily come to an

LIMITATION ACT (1908), S. 15

end on that date. Certain necessary endorsements
 have to be made on the plaint and hence that Court
 continues to have seisin of the plaint till it is actually
 returned to the plaintiff. Hence where a plaint is ordered

(Mulla J)
 181 I C 860 =
 A L J 460 =
 AIR 1939 All 590

—S 14 (2) Expl 1—Plaint returned for presen-
 tation to proper Court—Time between date of order and
 date on which plaint is ready for return—Disability
 No litigant should be made to suffer on account of
 the lapses or delay of the Court or its officers. The
 time between the date of the order of the return of a
 Court and the date
 and is to be deduc-
 and the proceedings
 for the purposes of
 non is made and the
 plaintiff is entitled to

—S 15—Applicability—Decree given as security
 for stay—Decree holder also undertaking not to accept
 v from his judgment debtor—Judgment
 o deposit sum due in Court—If tant
 'by an injunction or order—Execution
 f saved by S. 15

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By Art 104, Limitation Act all such a case as con-
 struing questions of limitation equitable considerations
 are out of place (Stone C J and Clarke, J)
 SHANKAR RAO v HAZARIMAL 181 I C 516 =
 I R N 468 = 1939 N L J 40 =
 AIR 1939 Nag 81

—S 15—Interpretation—Prescribing a period of
 limitation—Meaning of
 Per Thom, C J—If the result of a statutory provi-

—Ss 15 and 9—Judgment debtor subsequent to
 decree adjudicated insolvent—Suspension of time for
 applying for execution See LIMITATION ACT, Ss 9
 AND 15 AIR 1939 Lah 270

LIMITATION ACT (1908), S. 15.

—S. 15 and Civil Procedure Code, S 48—*Limitation prescribed by C. P. Code, if affected by S. 15, Limitation Act—Bar of limitation under S. 48, C. P. Code—Extent.*

The general provisions of S. 15, Limitation Act, are intended to apply to periods of limitation prescribed in the C. P. Code and are not confined in their operation to periods prescribed by the Limitation Act or by Sch. I. S. 48, C. P. Code, does prescribe a period of limitation. Hence S. 48 of the Code is not uncontrolled by the provisions of S. 15, Limitation Act. In other words, S. 48 of the Code does not impose a complete bar to the execution of a decree after the expiry of the period of 12 years irrespective of the provisions of S. 15, Limitation Act. (*Them, C. J. Iqbal Ahmad and Baigal, JJ.*) **DURAG PAL SINGH v. JANCHAM SINGH.** **I L R (1939) A 647=182 I O 242=12 R A 651=1839 A W R (H C) 216=1939 A L J 154=A I R 1939 All 277.**

—S. 15—*Order application of one of for insolvency—Effect against test.*

The institution and continuance of the insolvency proceedings against one of the judgment debtors does not in any way prevent the decree holder from proceeding to execute the decree against the other judgment-

the decree against the other judgment debtors. As

—S 15—*Scope—If controls S. 48, C. P. Code and extends the period of 12 years*

Quaere.—Whether S. 15 of the Limitation Act in any way controls the operation of S. 48 of the C. P. Code whether it applies so as to extend

by S. 48 C P Code (*Bromfield*)

See also *1939 A L J 154=1839 A W R (H C) 216=1939 A L J 154=A I R 1939 All 277.*

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See also *1939 A L J 154=A I R 1939 All 277.*

LIMITATION ACT (1908), S. 18.

—S. 15 (2)—*Notice to Secretary of State—Deduction of time.*

Under S. 15 (2) of the Limitation Act the period of two months can be deducted from the prescribed period of limitation for the suit in question when notice has been given to the Secretary of State as required by S. 10, C. P. Code (*Ganga Nath, J.*) **SHRI BHAGWAN v. SECRETARY OF STATE FOR INDIA.** **I L R (1939) All. 392=181 I C 248=11 R A 651=1839 A W R (H C) 216=1939 A L J 154=A I R 1939 All 277.**

—S. 18—*Applicability—Proceedings under the United Provinces Encumbered Estates Act. See UNITED PROVINCES ENCUMBERED ESTATES ACT, SS. 9 & 13 AND LIMITATION ACT, S. 18.*

—S. 18—*Applicability—Proceedings under United*

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—S. 18—*Applicability—Proceedings under United*

after the date of sale and where further the witnesses to the sale were neither residents of the locality where the property was situated, nor were they of the village where the vendees resided, the circumstances are such

after the date of sale and where further the witnesses to the sale were neither residents of the locality where the property was situated, nor were they of the village where the vendees resided, the circumstances are such

after the date of sale and where further the witnesses to the sale were neither residents of the locality where the property was situated, nor were they of the village where the vendees resided, the circumstances are such

after the date of sale and where further the witnesses to the sale were neither residents of the locality where the property was situated, nor were they of the village where the vendees resided, the circumstances are such

LIMITATION ACT (1908), S 19

lead to the inference that the vendee was guilty of fraudulent concealment of the fact of sale from the person entitled to pre-empt and as such the latter could avail

1933 A W R (H O) 847 = A L R 1939 A 113

—S 19—Acknowledgment—Form of—If addressed to creditor or his agent

For purposes of S 19 of the Limitation Act acknowledgment made is sufficient though it is addressed to a person other than the person entitled to property or right in question. It is not necessary that it should be addressed to the creditor or to some one in his behalf. It is immaterial in what connection and for what purpose and what form the acknowledgment made. (*Waroslaw and Son JJ*) BHALCHAND DATTATRAYA v CHANBASAPPA MALLAPPA

183 I C 225 = 12 R E 69 = 41 Bom L R 391 =

A I R 1939 Bom 237

—S 19—A knowledge—Letter by debtor admitting existence of unsettled account—Effect of

A letter of a debtor, who as agent collected rent of and looked after the bungalow of his principal to the effect that according to his accounts kept correctly only a definite particular amount was due from him, being an admission of existence of an outstanding unsettled account between them amounts to an acknowledgment as his assertion does not in any way make the unsettled outstanding account into a settled closed account. (*Abdul Rashid, J*) DIWANNI WIJAYAWATI v RAMJI DAS & CO 41 P L R 557 = A I R 1939 Lah 216

—S 19—Acknowledgment—Letter promising to send money in two or four days—If amounts to

Where certain monies were due in respect of transactions between the parties and the defendant wrote to the plaintiff that he had arranged with some one to send some money to the plaintiff and also added 'I too am sending money in two or four days' it is clear that the reference in the letter was to the defendants liability and the sentence is a clear acknowledgment of such liability on that date. The total liability on that date specifically any particular RAMCHANDER v

180 I C 5

1939 A W

—S 19—Ack
amounts to

An entry in a list of reliance, a local term meaning a list filed in a suit of the documents which the party relies on is not an acknowledgment. Further as it is not addressed to any one juridically connected with the plaintiff, he cannot rely upon it as an acknowledgment. (*Stone C J and Clarke, J*) TAPI LAL 181 I C 139 = 12 R N 95 =

—S 19—Acknowledgment—At Court of Wards—Report by Collector by the estate—A knowledge

A report made by the Collector admitting a mortgage under S 16 of the Bombay Code Act is an acknowledgment satisfying the requirements of S 19 of the Limitation Act. A Court competent to pass an acknowledgment in

LIMITATION ACT (1908) S 19

—S 19—Acknowledgment—Mortgagor and mortgagee—Statement in reply to decree holder's injunction application

de absolute the the mortgaged of applying for red by limita proceedings the

hence it was an acknowledgment which having been

—S 19—Acknowledgment—Recitals in reference to arbitration admitting liability—Sufficiency

Recitals in a reference to arbitration admitting liability to pay a debt amount to sufficient acknowledgment of liability in respect of the debt so as to extend the period of limitation, even though the reference may prove infructuous. (*Lobo, J*) TIKAMDAS MATHRADAS v KALIANJI GORDHANDAS 1 L R (1939) Kar 693 = 181 I C 596 = 11 R S 221 (2) =

A I R 1939 Sind 113

—S 19—Acknowledgment—What amounts to—Notice of demand by creditor—Claim specified amount based on certain calculations—Denial by debtor of liability for amount claimed coupled with expression of willingness to have accounts settled with creditor—If saves limitation

An admission by the debtor of the existence of an unsettled account between him and the creditor coupled with an expression of willingness to have it settled with him and a query whether anything would be due implies an admission of liability for the amount that may be found due upon the settlement. A denial of liability for the amount claimed by the creditor based upon certain calculations by him cannot be read as a total denial of

A I R 1939 Mad 300

—S 19—Acknowledgment—What amounts to—Requirements

The question whether any particular endorsement of the mean and on the the Court ses of the onta n the Where an of so and

KRISHN LEWARI

(1939) A 200 =

S A L J 1233 =

1939 All 177

LIMITATION ACT (1908), S. 19.

—S. 19—*Admission of liability—Filing of schedule of creditors in insolvency proceedings—If an acknowledgment.*

The filing of a schedule of creditors by an insolvent,

ONKART. BUDDI, 1905 A M L J. 151.

—S. 19—*Admission of liability—Guardian filing list of debts due by estate of minor Court—Note by him that it was difficult rectness of documents relating to debt been seen.*

fix the correct amount of each debt and to admit the correctness of the documents until they had been seen

Held, that it could not be said that this was an unconditional acknowledgment of a debt. No suit therefore could be based on it. (*Addison and Ram Lal, J.J.*) SRI CHAND SHEO PRASAD v. LAJJIA RAM.

182 I C 330=12 R L 14=41 P L R 356= A I R. 1939 Lah 31

—Ss 19 and 20—"Agent duly authorized"—*Mran*

—Ss. 19 and 21—*Co-mortgagors—Acknowledgment by one—If saves limitation as against others.*

An acknowledgment of liability by one of several mortgagors will ordinarily give a fresh start of limitation against the mortgagor who acknowledges the same

SABHU 18 Pat 434=184 I C 597=6 B R 56= 12 R P. 255=1939 P W N 273=20 P L T 619= A I R 1939 Pat 451

—Ss 19 and 21—*Guardian ad litem—Acknowledgment by—If effective against minor*

An acknowledgment of liability by a guardian ad litem of a minor, who is also the lawful guardian under the personal law of the minor, is effective against the

DEBI 33= 604= 399

LIMITATION ACT (1908), S. 20.

debts due out of the estate constitutes an "acknowledgment" under S. 19 of the Limitation Act. (*Wassooden and Sen, J.J.*) BHALCHANDRA DATTATRAYA v. CHANBASAPPA MALLAPPA

183 I O 225= 12 R B 69=41 Bom L R 391= A I R 1939 Bom 237.

—S. 19—*Mortgagee—Sub-mortgage deed by—Recital of rights and liabilities under original mortgage in his favour—If acknowledgment.*

Where a mortgagee effects a sub mortgage of his

(James and Rowland, SAHADUR RAI.

R P 537=5 B B 489= A I R. 1939 Pat. 427.

—S. 19—*No acknowledgment—Letter promising to pay debt incurred for necessity.*

A letter written by the guardian of a succeeding shebait promising to pay any debt incurred for legal necessity by the previous shebait, does not constitute an acknowledgment of any particular debt within the meaning of S. 19 of the Limitation Act. In the first place there is no acknowledgment of the right of any

it is no acknowledged promise debts which in the letter HIMANGSHU C W N. 843

—*Part-payment not falling under S. 20—If acknowledgment*

Ss. 19 and 20 of the Limitation Act are independent of each other. There may be an acknowledgment of liability, which comes within S. 19, unaccompanied by

ment from S. 19 (B. SADU

—S. 20—*Agent—Proof of at least implied authority—Necessity for—Buddhist husband—If wife's agent.*

A Burmese Buddhist husband is not necessarily the agent of his wife. It may be that no formal authorization is required under S. 20 but it must be shown that there was at least implied authority. (*Ba U and Mackney, J.J.*) U SO MAUNG v. THOM

184 I C 622=12 R R 163=A I R 1939 Rang 287

—S. 20—*Endorsement of payment—Date of payment of endorsement—If made at*

payment is made (*Dunlop, J.*) U PO NYUN v. 485= g. 118.

LIMITATION ACT (1908), S. 20.

S. 20 of the Limitation Act does not contemplate the interruption of limitation where payment is made by one

natory, it does not lay down exceptions to the general principle embodied in S. 20 (*Thoms. C. J. and Ganga Nath, J.*) *RAM KUMAR PANDEY v. HIRA LAL*
 11 R. (1939) All 258 = 181 I.C. 490 = 11 R. A. 568 =
 1939 A.W.R. (H.C.) 98 = 1939 A.L.J. 66 =
 A.I.R. 1939 A. 230

—S. 20—Payment and acknowledgment—Debt specified, payment if towards principal or interest not specified—Saving of limitation—Effect of proviso to section

After the 1st of January, 1928, it is a matter of complete indifference whether the payment is of interest or principal or both so long as it is a payment relating to the debt. So where a debtor makes a payment and acknowledges it in his own handwriting that it is in respect of the debt, but does not state towards principal or interest, the a fresh period of limitation under Act. If the acknowledgment is without identifying the debt, it is. Under the amended section it is that the payment was towards and *Niyogi, J.* *NARAYAN v. RAM*
 11 R. (1939) Nag 23
 182 I.C. 572 = 12 R.N. 20 =

—S. 20—Payment of interest.
 So far as the payment of interest is concerned, the acknowledgment in writing must be of the payment of interest 'as such'. The word 'payment' in the proviso refers back to the section which it qualifies, and the words 'as such' occur in relation to the payment of the interest in the section itself (*Thomas C. J. and Yorke, J.*)

by debtor and endorsement—Absence of appropriation by him—Subsequent endorsement by creditor to interest—Legal effect of.

Where a debtor makes a payment to the creditor and endorses such payment on the document evidencing the

(as amended in 1927), S. 20 (1)—Construction
 —"As such"—Scope and effect of—Promissory note—Payments by debtor endorsed on note—Absence of Specification as to payments being for interest or principal—Appropriation by creditor to principal—If saves limitation.

LIMITATION ACT (1908), S. 21.

back of the promissory note executed by him to the creditor,—it is a payment of interest as such by the creditor,—it is a payment to save limitation under S. 20

tation Act. (*Harries, C.J. and SANTA PRASAD SINGH v. HARI SINGH*, 18 Pat 253 =
 C 330 = 5 B.E. 924 = 12 R.P. 121 =
 20 Pat L.T. 175 = 1939 P.W.N. 170 =
 A.I.R. 1939 Pat 389

—S. 20 (1) Proviso (as amended)—Endorsement by person making payment—If should be written by him
 Under the present law, all that is necessary is that the endorsement should have been signed by the person making the payment. It is quite unnecessary that the whole endorsement should have been written by the person making the payment (*Dunkley, J.*) *U PAW TINT v. U THAN DAING*, 181 I.C. 393 =
 11 R.E. 460 (2) = A.I.R. 1939 Rang 112.

—S. 20 (1), Proviso—Payment made by daughters of promisor—Endorsements by them—Necessity for
 It is true that if money is sent by a person by the

by—If binds other members

The manager of a Hindu joint family has power to make part payments in respect of a debt which is legally recoverable being within time and the other members of the family are bound by such payments. (*Ramswami J.*) *RAWTA v. POKARDAS*, 1939 M.L.R. 88 (Civ.)

—S. 21 (1)—Hindu Law—Paternal grandmother—If 'lawful guardian'—Endorsement by—If saves limitation.

On the death of the parents neither by Hindu Law nor by custom is the grandmother recognised as the lawful guardian of the minor and endorsement of payments by the paternal grandmother cannot bind the minor and save limitation (*Leach, C.J. Mockett and Krishnarajam Aiyangar, JJ.*) *CHENNAPPA v. CHAKRAPPA*, 50 L.W. 896 =
 (1939) 2 M.L.J. 884 (F.B.)

—Acknowledgement by partner—If saves

mercantile concern, a partner has an

—S. 21 (2)—Joint mortgagors—Payment of interest by one—Effect

The term 'joint contractors' in S. 21 (2) also includes joint mortgagors. Section 21 (2) must be read in conjunction with Ss. 19 and 20, as such by one of the agent of the other alive the debt as against the payment. The claim personally as well as against leged by him. For, each of

LIMITATION ACT (1908), S. 21.

the contractors is a principal (although it may appear that one is as it were a surety for the other), the one

debt; but it is not a pledge which can be dissociated from the liability incurred. It could only be so if there were an express agreement to that effect. Consequently, when the liability of one of the joint contractors ceases, his share of the property pledged as security is also discharged from liability. (*Ba U and Mackney, J.J.*) U SO MAUNG v. THOM. 184 I C 622 = 12 R R 163 = A I R 1939 Rang. 287.

the get
ACT,

S 21 (3) (b) of the Limitation Act lays down two conditions in order that acts of a member of a joint Hindu family, during the period of his conditions are by or on behalf of specified acts family but may

however, necessary that the document evidencing the loan must on the face of it show that the loan was incurred on behalf of the joint family. If the fact that the loan has been incurred on behalf of the family can be established, the condition S 21 (3) (b) would be

CHAND TEWARI v. RAJANI KANTA MUKHERJEE, 70 C L J. 201.

—S 22—Applicability—Alteration of misdescription and substitution—Distinction—Amendment seeking to substitute one legal entity for another—If can be permitted after limitation

The essential difference between an alteration that comes under the head of mere misdescription and an amendment that comes under the head of substitution is

(*Davis, J. C. and Mehta, J.*) MANGHARAM KUPCHAND v. HAJI SORIK PUNHOO I L R (1939) Kar 275 = 182 I C 881 = 12 R S 39 = A I R 1939 Sind 172

—S 22—Applicability—Hindu joint family—Suit in names of members with word "firm" affixed—Amendment after limitation by deleting word "firm"

section as to registration of the firm being taken, plainiffs amended the plaint by deleting the word "firm." But this amendment was made after limitation had expired

Y. D. 1939—48

LIMITATION ACT (1908), S. 26.

Held, that the suit was not barred under S. 22 as the deletion of the word "firm" was no addition of parties of S. 22 the original description of partners being mere misdescription. JIRATH SINGH v. MUNGA LAL. C. 761 = 11 R P. 400 = 5 B R. 284 = A I R. 1939 Pat 40

—Applicability—Claim to attached property—Order allowing—Subsequent transfer by claimant—Suit to set aside claim order—Joinder of transferee from claimant after period of limitation—Effect on suit See C. P. CODE, O 21, R. 63

17 Pat 588.
—S 23—Continuing wrong—Dispossession, if would amount to—Construction of S. 23.

Dispossession is a trespass and in one sense a continuance of the meaning of S. 23 of an Act must be read in different provisions, a manner that there Arts. 142 and 144.

Complete usurpation of possession and occupation and consequent dispossession of the owner of the land is a

—S 23—Continuing wrong—Tenant building house on holding contrary to terms of tenancy

The building of a house on his holding by a tenant contrary to the terms of his tenancy is a continuing wrong, therefore does not run against the operation of the Act. SURJA GORAIN

GNANENDRA NATH BANERJEE 179 I C 482 = 5 B R 237 = 11 R P 380 = A I R 1939 Pat. 149.

—S 23—Dissolution of Mahomedan marriage—Suit for, on ground of impotency—Limitation

Under Mahomedan law marriage is a civil contract and husband's impotency is a continuing breach of contract of marriage within the meaning of S. 23. Hence a suit by wife for dissolution of her marriage with her

right to use it, consistently with the rights of the other co sharers until partition. Where therefore one of the owners of a joint wall erects a wall on the top of the joint wall and keeps ventilators in the wall so erected, he does so consistently with the rights of the co-owner and hence cannot acquire a right of easement in respect of the ventilators against the co owner. (*Bhida, J.*) ONKAR NATH v. LALA MUNI LAL

182 I C 498 = 12 R L 50 = 41 P L E 267 = A I R 1939 Lah 28.

—S 26—Easement of way—Person throughout claiming ownership of soil under passage—If can claim

Per Mackney, J.—It is essential that the person claiming easement of way must have been conscious

LIMITATION ACT (1908) S 26

was using the passage that he was exercising a right of easement over the land of another. When he has throughout claimed that he was the owner of the land over which the way passed it cannot be said that he was conscious of using the way in the exercise of his right to do so as an easement and his claim for easement must fail. If the facts proved are so indeterminate as to point equally to ownership or to the exercise of a right to an easement, it cannot be held that an easement has been established because the fact of ownership has not been proved. Further, for the purpose of acquiring a right of way or other easement under S 26 it must at least be shown that the servient owner might be expected to have known of the assertion of the right of way on the part of the dominant owner (*Dunkley and Braund JJ*) **MURUGAPPA CHETTYAR v K S A K. CHETTYAR FIRM** 180 I C 477=11 B R 397=

AIR 1939 Bang 31

—S 26—*Lessees of adjacent plots under same landlord—One of them owning building on plot—Right to prescribe for light and air against other.*

A lessee of land who owns a building thereon, can

pal sweepers passing over land to sweep latrine of another person—Owner of latrine—If can claim easement of way.

When S 26 talks of the enjoyment of a right by a person what it really means is that there must be an exercise of that right by that person. Where for a

landowner claim a right of way by way of easement in respect of this user by the sweepers of the Municipality because the activities of the sweepers are directed wholly by the Municipality and over them the owner of the latrine himself has no control. In these circumstances, such user cannot be accounted an enjoyment by the owner of the latrine of the right he claims as an easement and as of right. Furthermore as under S 185, Burma Municipal Act, the sweepers have a right given by statute, to enter on any other's land for the purpose

MURUGAPPA CHETTYAR FIRM

—S 26—*Well used constructed in living man prescription*

It is a little difficult to see how a changing and fluctuating population of a locality can be considered to occupy the status of a dominant tenement. It is true that certain classes of rights have been held to have been acquired by prescription such as a right of way or the right to bury dead bodies and in all such cases a presumption has been made that the custom in question had a lawful origin in a dedication. Where however a well which has been used by the people of a mohalla was construct-

LIMITATION ACT (1908), Art 2

ed in living memory and property in it has been changing hands by sale it cannot be said that *qua* the user of the well an ancient custom has been established for which it was necessary to trace the legal origin to a dedication and hence no right by prescription as contemplated by S 26 can be said to have been acquired (*Addison and Ram Lall JJ*) **WALAITI RAM v NATHI RAM** 184 I C 76=12 R L 152=

41 P L R 536=AIR 1939 Lah 191

[Reversing AIR 1939 Loh 12]

—S 28—*Applicability—Khorposhdar adversely enjoying usufruct of adjoining jungle belonging to grantor*

It is open to a tenant encroaching upon the adjoining land of his landlord which is not included in his lease to indicate that he intends to hold the encroached land for his own exclusive benefit and not to hold it as he held the land given to him in his lease. The nature and effect of his possession depends upon the nature and extent of the rights asserted by his overt conduct or express declaration. If a *khorposhdar* who is entitled under his grant only to the cultivated area in a village

11 E P 638=AIR 1939 Pat 587

—S 28—*Scope and operation of—Right to moveable property—If affected*

The rule of limitation is a rule of procedure, and does not either create or extinguish rights except in the case of acquisition of title to immovable property by

on Act S 28

to immovable

thin the period

right to move-

T BOROUGH

41 Bom L R 1002=AIR 1939 Bom 494

—S 29—*Part payment—Test*

Part payment need not be in actual cash and the test is whether the payment would be an answer to a suit brought by the creditor to recover the amount (*Nor man*) **LADHU RAM v LADU**

1939 A M L J 23

—S 29 (as amended in 1922)—*Reasons for amendment*

held the and tion ved and

Bajpai JJ) **DURAG PAL SINGH v PANCHAM SINGH** I L R (1939) All 647=182 I C 242=

12 R A 98=1939 O L R 472=

1939 A W R (H C) 498=1939 A L J 522=

A I R 1939 All 403 (F B)

—Arts 2 and 120—*Applicability—Suit for recovery of statutory compensation*

Where it is admitted that the act was performed under the powers given by the statute and the cause of

LIMITATION ACT (1908), Art. 8.

action alleged against the Secretary of State is a failure to allot the statutory compensation provided, then Art. 120 and not Art. 2 governs the case. A I.R. 1936 Pat. 513, Appl. (*Dalip Singh, J.*) **AMAR KAUR v. SECRETARY OF STATE** A.I.R. 1939 Lah 583

—**Arts 8 and 52—Sale of articles of food by shopkeeper—Latter also running restaurant—Suit, for their price—Limitation**

Consumable commodities sold in a restaurant would certainly come under Art. 8 of the Limitation Act, but the mere fact that a proprietor of a store has a restaurant department does not make all articles of food which he may have sold in a different department lose their character of "goods" and with all the benefit of the Art. 52 of the Act. Food and drink would come under Art. 8 must be the food which are either consumed on sent out or taken away by the customer which are intended for, or capable of, immediate consumption in the state in which they are sent out, that is to say, without cooking. If from the restaurant is sent out, for instance, a case of beer, that would scarcely be drink in that sense of the word. It would be goods, and the same applies to articles in this which do not require immediate consumption. (*Baguley, J.*) **PERSHAD v. THE FIRM OF UNICA**, 1939 Rang L.R. 626.

—**Art 10—Applicability—Suit for pre-emption within one year of sale—Transfer by vendee—Transferee added more than a year after the date of transfer—Suit, if barred**

Where a purchaser under a sale deed in respect of

transfer only subject to the right of pre-emption. Though such a transferee is impleaded in the suit more than a year after the date of the transfer to him, the

—**Art. 11-A—Applicability—Delivery of possession to decree-holder purchaser under O. 21, R. 96, Code—If amounts to dispossession**

Before Art 11-A of the Limitation Act applies, must have been an act of dispossession by the decree holder or auction purchaser. An order for delivery of possession of land in the actual possession of tenants made in favour of the decree holder purchaser under

—**Art 12—Applicability—Execution sale under decree on void mortgage by Hindu father—Suit by sons for possession impeaching mortgage decree and sale—Limitation** See **HINDU LAW—DEBTS**

1939 M W N 918.
—**Art 14—Applicability—Grantee of Sanad under S 133, Bombay Land Revenue Code—Suit against for possession—Limitation** See **BOMBAY LAND REVENUE CODE S 133** 41 Bom L.R. 939

—**Art 14—Applicability—Suit to set aside mutation order and for possession**

A suit to set aside order of mutation and for possession of immovable property brought less than eight years after the order of mutation and within 12 years of the death of the last owner, in the absence of any pro-

LIMITATION ACT (1908) Art. 28

vision barring the same after one year is within time, and Art. 14 is not applicable (*Addison and Ram Lall, J.J.*) **ASA RAM v. FATIMA BEGUM**

183 I.O. 853—12 B.L. 145 (2)—
A.I.R. 1939 Lah. 135.

—**Art. 14—Applicability—Suit under S. 36, proviso (3) of Bombay Hereditary Offices Act—Limitation** See **BOMBAY HEREDITARY OFFICES ACT, S 36, PROVISIO (3)** 40 Bom L.R. 1288.

—**Arts. 14 and 120—Objection in partition proceedings disposed of without deciding real point at issue—Declaratory suit—Bengal Estates Partition Act, S. 119**

under Bengal Estates proceeded to take Art. When he was (iii) one A raised an objection and claimed that tenancy created by B was tenure which affected interests of B only and was not admitted to be permanent tenure by A. The dispute was due to the definition of "assets" in s 3 of the Act. The Deputy Collector disposed of the question without coming to decision on any real point at issue. He said that the tenancy was either a rayati jote or a tenure admitted by all the recorded proprietors to be a permanent tenure. A thereupon brought a suit for declaration that tenancy granted by B in favour of certain persons was a tenure which affected the interests of B only and was not admitted by A to be a permanent tenure.

Held, that a mere declaratory decree could not be any use as not rid of not open

to the Civil Courts to give a direction to the Revenue Officers there was no longer any case for giving a mere declaration as to the nature of the tenancy.

Held, further, that s 119 of the Estates Partition Act could not possibly be a bar to the suit.

Held also that the suit was governed by Art. 120 and not by Art. 14. For limitation depended upon the cause of action set out in the plaint and the relief claimed. The ulterior object or motive at the back of

A.I.R. 1939 Cal 749

—**Art 23—Applicability—Illegal distress—Suit for damages and compensation—Distress without jurisdiction—If excluded from operation of article—Art. 36 of—General and specific provisions—Exemption by latter—Rule.**

A specific article dealing precisely with a dispensation for illegal distress or distraint. Distress has the same meaning as distraint. The illegal distress contemplated by the article might be the result of various causes. The seizure of the property might be illegal either because the party from whose possession it was seized was not liable or because the property on account of its character was itself exempt from seizure. Again the person effecting seizure or the officer under whose authority the distraint is effected might have no power or jurisdiction to effect the seizure, or the distraint itself might not be in conformity with the provisions of the statute under which the act was purported to be done. It cannot be said that seizure due to want of jurisdiction is not contemplated by Art. 23. Such a seizure is an illegal distraint covered by Art. 23, and there is ground for applying Art. 36, which is a very wide

LIMITATION ACT (1908), Art 32

general article Art 28, being an express an-
article, must prevail over the general r
(*Wassoodew J*) SHRIDHAR MAHADEO v
(JETHMAL) 41 Bom L

—Art 32—*Inapplicability*—*Landlord*
gairmazrua am lands on tenant—*Latter brings*
under cultivation—*Suit for its recovery*

A landlord has no right to settle *gairmazrua* a
and if he purports to do so, the person with w
purports to settle them acquires no tenancy i
virtue of the settlement. If such a person brings the
land under cultivation, his act amounts to an ouster of
the public and the period of limitation for a
recover possession is 12 years from the ouster
of the Limitation Act has no
(*Agarwala, J*) LACHMAN
MAHTON

—Art 36—*Applicability*—*Illegal distress*—*Act*
without jurisdiction—*Limitation for suit for compensa-*
tion See LIMITATION ACT, Art 36

41 Bom L R 1223

—Art 36—*Suit in tort*

giving rise to a claim for compensation for damages
(*Addison and Ram Lall J*) GHULAN HAIDER v
IQBAL NATH 184 I C 130=12 R L 167=

A I R 1939 Lah 118

—Art 44—*Applicability*—*Sale*—*minor jointly with de facto*
described as guardian—*Recital*
both and that consideration was
Validity of sale

Art 44 of the Limitation Act applies only to a trans-
fer by a guardian and does not apply to a transfer by
one who though a *de facto* guardian, purports to transfer
his ward's property in his own capacity and as his
own property. Where a person who is the *de facto*
guardian of a minor and who has been managing the
minor's property executes a sale deed of the minor's
property jointly with the minor without any
mention of his acting as the guardian of the
minor who is the owner of the property, and the sale
deed recites that the property which is 'our' property is
sold for consideration required for our family neces-
sity and for the expenses of the minor's marriage it
must be taken that the property is treated as belonging
to both of them and that both of them purport to trans-
fer the property.

interest in the land and since the minor being a minor
cannot validly sell his interest in the land the sale deed
is ineffective and the vendee acquires no interest in the
property. The minor owner is not bound to get the sale
deed set aside within three years of his attaining majority
as prescribed by Art 44 of the Limitation Act
(*Lokur, J*) AMATEPPA v SANGANEASAPPA

41 Bom L R 867=A I R 1939 Bom 427

—Art 44—*Applicability*—*Suit by a transferee*
from a minor who has attained majority

Where an assignee or vendee from an ex minor sues
for possession as against prior purchasers from the
minor's guardian, whatever view may be taken as to the
specific applicability of Art 44 of Limitation Act one
point is clear and that is that the plaintiff as an assignee

LIMITATION ACT (1908), Art 59

—Art 49—*Scope and applicability of*
Art 49 of the Limitation Act contemplates a case of

preclude the appli-
operation only when
possession becomes wrongful. In cases where
the original possession of the defendant is lawful but
becomes unlawful by reason of certain facts, Art 49 is
the ordinary article to apply. (*Niyogi, J*) BULAKI
DAS v RATHAKISAN 1 I L R (1939) Nag 498=

183 I C 386=12 R N 59=1939 N L J 190=

A I R 1939 Nag 177

—Arts 52 and 85—*Applicability*—*Sale of goods*—
Payments made by purchaser on account—*Suit by seller*
for balance

Between 25th October 1934 and 24th December,
1934 a person had sold to another person goods worth
Rs 357-12-6. The purchaser had made payments on
account between 27th October 1934 and 6th October,
1934 6 On 23rd June 1938
balance of Rs 59 8 0 together

fell under Art 52, because the
account consisted entirely of goods delivered on the one
hand and payments made towards the price of those
goods on the other. Art 85 could not apply because
there were no reciprocal demands between the parties.
There had not been and from the nature of the case
could not be any demand from the purchaser to the
seller. This was clearly a suit for goods sold and deli-
vered and was barred by time. (*Shemp, J*) KAHAN
CHAND v HADAYAT ULLAH A I R 1939 Lah 307

—Arts 52 and 8—*Sale of articles of food by*
shopkeeper—*Later also running restaurant*—*Suit for*
their price—*Limitation* See LIMITATION ACT ARTS
8 AND 52 1939 Rang L R 626

—Arts 57, 59 and 60—*Relative applicability*—
Test

Art 60 of the
Art 57 or
PRASAD v
9 A M L J 6

—Arts 59 and 60—*Applicability*—*Loan or deposit*
Test to be applied.

Arts 59 and 60 deal with transactions of two different
nature, while the former applies to loans the latter
applies to deposits. That a transaction is a deposit has
to be proved undoubtedly by the person alleging it to be
so. The test to determine whether a particular trans-
action is one of loan or one of deposit is to ascertain
whether the money paid or deposited was in the nature
of an advance of loan so as to create the relationship of
creditor and debtor between the parties or was merely a
deposit without bringing into existence such relation-
ship. (*Iqbal Ahmad, J*) GULZARILAL v MANZOOR
AHMAD 184 I C 559=12 R A 257=

1939 A W R (H C) 304=A I R 1939 AH 378

LIMITATION ACT (1908), Art. 60

—Art. 60—*Agreement that deposit shall be payable on demand—If can be implied.*

The agreement that the money shall be payable on demand—*Art. 60—*

—Art. 60—*Applicability—Conditions necessary—Agreement, when can be implied—Deposit—Onus.*

For Art. 60 of the Limitation Act to apply, it must be proved that there was a deposit and that there was an agreement that the money should be payable on demand, or alternatively that the relationship of the parties was that of a customer and banker, this being a particular kind of deposit payable on demand. In the latter case an 'agreement' to repay on demand is doubt implied. The burden of proving that a deposit lies on the person asserting, SHEO PRASAD v. MT. DAKHAN.

—Art. 60—*Applicability—Money specified time—Suit for recovery of—Li.*

Where money is deposited under an agreement that it shall be payable at a specified time, the expiry of the time fixed, must be payable on demand to the depositor, a recovery of such money is governed by Limitation Act (*Fazl Ali, J.*) NOK PRASAD v. MOJIBAN 182 I.C. 831 = 12 R.P. 80 = 1939

20 Pat L.T. 81 = A.I.R. 1

—Art. 60—*Applicability—Money another to secure monthly payment to third.*

When one person places money with another to secure a regular monthly payment to a third, the transaction amounts to one of deposit with whom the money is deposited becomes, as regards the depositor, a debtor. (*D. R.*)

—Art. 60—*Construction—Demand—Meaning and essentials of.*

The demand contemplated in Art. 60 must be a legal demand. It must be made by a person capable of giving a valid discharge in the event of payment being made. If the deposit is payable to more persons than one it equally follows that the demand must be made by them all or at least by one of them duly authorized by the others and in a position to give a legal discharge on behalf of himself and the others. In the same way the demand referred to in Art. 60 must be a demand made directly on the party with whom the deposit lies in his capacity as depositor. The demand must be an undivided demand for the whole sum due. A claim to deposit not addressed to depositors but put forward in a written statement in a suit in which both the claimant and the depositor were co-defendants is not a demand of the nature contemplated in Art. 60 (*Davis, J.C. and Lobs, J.*) GOPALDAS NETHI v. CHELLARAM 118 I.L.R. 118 = 12 R.S. 25 =

—Art. 60—*Starting point—When demand—Subsequent demand—If and when gives a fresh cause of action.*

Time under Art. 60 of the Limitation Act can only run from the date of demand, if that demand is part of the cause of action. Where as a result of a demand some payment is made, a later demand would give a

LIMITATION ACT (1908), Art. 62.

fresh cause of action, only if full payment had been made on the first demand and the second demand was for a sum not due when the first demand was made.

ANG RAI v. SITA RAM.

1939 A.M.L.J. 66.

120—*Applicability—Suit to guardian for necessities of CONTRACT ACT, S. 68.*

1939 M.W.N. 798.

—Art. 61—*Starting point—Guardian of minor's person and property appointed by Court—Advance of moneys to estate for expenditure without sanction of Court—Subsequent handing over possession of property to ward under Court's order—Suit to recover money advanced to estate—Cause of action—When arises.*

Where a guardian appointed by the Court of the person and property of a minor has advanced moneys to

11 BOM L.R. 216.

—Arts. 62 and 89—*Applicability—Management by daughter under father's will—Suit by another daughter for account—Limitation.*

Where under the terms of her father's will the eldest daughter is appointed manager and lambardar for her life time and was given powers not only to collect and distribute the profits, but also to manage the household, etc., and another daughter files a suit against the managing daughter for rendition of accounts, Art. 62 of the Limitation Act cannot apply to it, for the money or profits received by the managing daughter was not money received by her for the use of the plaintiff and it is only Art. 89 that can apply. The eldest daughter is in control of the interests of the other daughters in the estate with their consent, and therefore Art. 89 applies to suit by one of the daughters. (*Thom, C.J. and Gangi Nath, J.*) ANHARI KUER v. RAM PEARCY 118 I.L.R. (1939) All 591 = 183 I.C. 584 = 1939 A.W.R. (H.C.) 456 = 1939 E.D. 382 = 12 R.A. 152 = 1939 A.L.J. 428 = A.I.R. 1939 All 442.

—Arts. 62 and 89—*Applicability—Suit by co-sharer against another co-sharer for share of amount*

mined. In such cases money will be said to have been received for the use of the plaintiff. In cases however where the shares are not determined and taking of an account is necessary before the respective shares can be adjusted the article applicable will be Art. 89. Limitation Act 32 Cal 527, Folio (A) am.

LIMITATION ACT (1908), Art 62

C J and Ranjimal, J) **HAMERMAL v HASTIMAL**
1939 M L R 44 (Civ)

—Arts 62 and 120—Applicability—Suit to recover money wrongfully withdrawn by defendant from Court See **LIMITATION ACT, ARTS 120 AND 62**

69 C L J 108
—Art 61—Account stated—Signing acknowledged in account book—If amounts to

Where a person goes through the account and signs an acknowledgement of his liability for a particular sum in the creditor's account book and affixes an anna stamp to that entry the account is an account stated within the meaning of Art 64 of the Limitation Act

C J and Zia ul Hasan, J) **RAM CH**

NANHYV 14 Luck 478=179 I

11 E O 215=1939 O L R 103=1939 O

1939 O W N 176=A I R 1939 Oudh 120

—(as amended in 1938) **Art 64-A**—If retrospective—Suit barred before amendment—If revived by amendment

Art 64-A of the Limitation Act as amended in 1938

for such a suit has already expired before 15-1-1939 the date on which the amendment came into force a plaintiff cannot file such the benefit of the new Amendment (*Engineer, J*)
EBRAHIM BUSHEPI & C

—Arts 68 and

debtor—Endorsement by him that he would pay balance within certain period—Limitation—Starting point

to run from the expiry of the pe
endorsement (*Shemp J*) **HA**
SINGH 41 P L R 352=

—Art 73—Applicability—
knowledge by defendant of
between him and plaintiff's husband
plaintiff—Suit on—Limitation
INSTRUMENTS ACT, S 4

—Art 73—Promissory note—Endorsement—Suit
against endorser—Limitation—Starting point

The liability of an endorser of a promissory note arises only on the date of the endorsement and a suit against within three years of the endorsement though beyond three years of the execution of the promissory note is not barred by limitation (*Kunhi Raman, J*)

ed by the very terms of the bond to sue only for such instalment as remains unpaid No question of waiver

Manohar Lall, J J) **GOKHUL MAHTON v SHEO**
PRASAD LAL SETH 18 Pat 459=183 I C 523=

LIMITATION ACT (1908) Art 85

12 E P 167=5 B E 965=1939 P W N 367=
20 Pat L T 443=A I R 1939 Pat 433 (F B)

—Art 75—Waiver—What amounts to—Acceptance of part of, or interest on, overdue instalment

Mere failure to sue or inaction by the creditor is not a waiver of the default Some overt act must be established from which the Court of fact can draw the inference that the obligee has waived the default Where the promisee has accepted an overdue instalment it must be held that he has waived the default and limitation would run only from the next default, if not waived But acceptance of a portion of an instalment which was

18 Pat 459=183 I C 523=12 R P 167=
5 B E 965=20 Pat L T 443=1939 P W N 367=
A I R 1939 Pat 433 (F B)

—Arts 83 and 116—Applicability—Contract of sale of mortgaged properties—Undertaking by vendee to mortgage debt—Default in payment—Sale of aged properties in sale in execution of decree on age—Subsequent transfer of part of properties in—embrace—Right to sue on the covenant—Limitation—Starting point

Where a vendee or other transferee from a mortgagor

implied A cause of action on such a contract arises to the vendor when he is actually damaged by a sale of the property owing to the mortgagee's failure to pay the mortgagee's debt to pay The three years under

see on the contract of it originally made with the mortgagor within the time limited (*Dharle and Agarwala, J J*) **MST MEHDATUNNISSA BEGUM v MST HALI MATUNNISSA BEGUM** 17 Pat 751=

5 B E 588=181 I C 459=11 R P 590=
1939 P W N 361=A I R 1939 Pat 194

—Art 85—Mutual account—Test of

To constitute mutual account the parties must be

and parties
parties
Sukhdeto

1939 M L R 40 (Civ)

—Art 85—Mutual, open and current account—

is found in it is determined with mutual dealings or 'mutual accounts' are not necessarily safe guides when considering what constitutes

LIMITATION ACT (1908), Art. 85.

'mutual, open and current account' under Art. 85 of the Limitation Act. (*Stone, C.J. and Clarke, J.*)
TAPI BAI v. SHANKARLAL 184 I.C. 139 =

12 R.N. 95 = 1939 N.L.J. 109 =
A.I.R. 1939 Nag. 113.

—Art. 85—*Mutual, open and current account—Meaning of—Absence of shifting balance, if affects the nature of the account.*

The meaning of the term mutual, open and current accounts as understood by the decisions is that they are such as consist of reciprocity of dealings between the parties and do not embrace those having items on one side only, though made up of debits and credits and that the absence of a shifting balance is not fatal to the conception of mutuality (*Stone, C.J. and Clarke, J.*)
TAPI BAI v. SHANKARLAL. 184 I.C. 139 =

demands.

Where there is dual contractual relationship between the parties (i) that of borrower and creditor and (ii) that of principal and agent, and in these dealings, the plaintiff as creditor has demands against the defendant, while the defendant as the principal has independent demands against the plaintiff as his agent, and the transactions in all the dealings are entered in one

41 P.L.R. 809 = A.I.R. 1939 Lah 356

—Art. 85—*Mutual, open and current account—When ceases to be as such—Effect of acknowledgment.*

A mutual, open and current account continues as such, so long as the account remains open and current. It would not become a non-mutual, open and current account, merely by reason of the fact that after a certain date the account was one-sided. The mutuality results from the reciprocal claims which can spring out of the transactions which once made the account mutual. Where an acknowledgment closes the old account, then the old account ceases to be a mutual, open and current account. It could cease to be open and it could cease to be current, but it could never lose the quality of mutuality. With the end of the characteristics would end (*Stone, C.J. and Clarke, J.*)
LAL

1939 N.L.J. 109 = A.I.R. 1939 Nag 113

—Art. 85—*'Reciprocal demands'—Meaning of expression*

The phrase 'reciprocal demands' in Art. 85 of the Limitation Act does not import that either party has made an actual demand in fact. But the dealings must be of such a nature that the mutual demands exist. (*Stone, C.J. and*
SHANKARLAL.

1939 N.L.J.

—Arts 89 and 120

Promissory note by debtor in favour of one—Arrangement that latter should collect and pay other his share of collections—Relationship—If agency or trust—Suit for accounts—Limitation

Where a debtor executes a promissory note in the name of the defendants and also gives him securities in respect of amounts due jointly to the plaintiff and the defendant, as part of an arrangement bet-

LIMITATION ACT (1908), Art. 91.

ween the three parties, to the effect that the defendant should collect the amount by realising the securities and appropriate the amounts so collected towards the debt due to him and the plaintiff, the latter being a minor at the time, the essence of the arrangement is that the defendant is entrusted with the instruments, which involve on his part an obligation to collect the collections under the instruments and pay the plaintiff his share of whatever the defendant realises, though there is no specific trust for that purpose. The defendant takes the promissory notes subject to the equitable right of the plaintiff to claim an account. The relationship of the defendant to the plaintiff in such a case is only one of a fiduciary nature involving liability to account and not that of agent and principal. The relationship is more akin to that of a trustee liable to account, Art. 89

A.I.R. 1939 Mad. 671.

—Art. 89—*Applicability—Suit for accounts by one daughter against another daughter managing under father's will. See LIMITATION ACT, SS 62 AND 89.*
1939 A.L.J. 428.

—Art. 89—*Applicability—Transfer of property by term of years—all business and having power of gent or trustee—LIMITATION ACT, 5 CLT 18.*

—Art. 89—*Suit to recover money collected by agent—Starting point—Agency revoked by letter.*

Where a suit is by the principal to recover money collected by his agent whose agency had been revoked by a letter, no cause of action on the basis of revocation could arise against the agent until the termination of his authority as agent, hence he could not be sued until he had received the notice of revocation. The cause of action cannot commence from the date of posting of such a notice. (*Allot, J.*)
RANCHANDER v RURE KUNWAR 1939 A.W.E. (H.C.) 735 =
1939 A.L.J. 961 = A.I.R. 1939 All 738

—Art. 91—*Applicability—Suit to declare plaintiff owner of property transferred by fictitious sale*

Where to avoid a wife's claim to dower debt the

to be the owner of the property and hence it is not incumbent on him to have it set aside and so Art. 91 of the Limitation Act could not be pleaded in bar of his suit to declare that he is the owner of the property. (*Jamil, J.*)
KHALIQ AHMAD v GHULAM GHANUS 1939 A.L.J. 389 = 1939 A.W.E. (H.C.) 400.

Limitation Act has no application to a case where a suit is brought by her for possession upon declaration that an instrument under which the defendant claims is void (*Collister and Baggin J.J.*)
ISHAR FATIMA BIBI v. ANWAR FATIMA BIBI 182 I.C. 801 (2) = 12 E.A. 38 = 1939 A.L.J. 642 =
1939 A.W.E. (H.C.) 889 = A.I.R. 1939 All 348.

—Art. 91—*'Instrument' referred to in article,*

LIMITATION ACT (1908), Art 91

The instrument to be cancelled or set aside which is referred to in Art 91 is that instrument which the plaintiff himself has actually asked to set aside and not one which he ought

(*Roberts, C. J. and Braund, J.*) N

CASSIM EBRAHIM

AIR 1939 Rang 218

—Art 91—Knowledge of facts—Onus

The burden of proof is on the defendant to show that the plaintiff had clear and definite knowledge of the true facts (*Collister and Barpar, JJ*) ISHAR FATIMA BIBI v ANWAR FATIMA BIBI

182 I O 801 (2) = 12 R A 38 = 1939 A L J 642 = 1939 A W R (H C) 889 = AIR 1939 All 348

—Arts 91 and 144—Sham sale deed—S for possession by vendor—A
TION ACT ARTS 144 A

—Arts 97 and 144

lease with possession—S

for return of premium and costs and damages on ground of want of title in lessor—Limitation—Starting point

A suit by a lessee under a registered lease who has been dispossessed from the property for return of the nazarana or premium paid by him to the lessor or any consequent costs or damages on the ground that the lessor had no title is governed by Art 116 of the Limitation Act even though it may apparently fall within Art 97. As between the lessor and lessee the transaction cannot be regarded as void *ab initio* when both parties have considered that the lessor had a good title convey and when possession has been taken under lease by the lessee. The starting point of limitation is the date of dispossession of the plaintiff and a suit brought within 6 years of that date is within time (*Harriet, C. J. and Manohar Lal, J.*) DEBI PRASAD AGARWALA v HAJI SYED MEHDI HASAN

18 Pat 654

—Art 102—Wage

The term 'wages' very general term and connection with the daily paid as monthly salary

Ranithmal, J) SIMARTHMAL v SURAJRAJ

1939 M L R 62 (Civ)

—Art 106—Applicability—Partnership between two members of a divided Hindu family—Death of one of the partners—Continuation of partnership by members of both families—Suit for dissolution and a counts by members of deceased partner's family after three years after his death—If barred

Where on the division of a joint Hindu family two of the members enter into a partnership and carry on business and on the death of one of them, the members of his family and those of the other partner continue the

LIMITATION ACT (1908), Art 113

—Arts 109 and 120—Applicability—Claim for

sion was not however taken and the mortgaged lands were leased to the mortgagor for the term of the mortgage at a rent which represented the interest on the mortgage amount. In 1920 defendant who had obtained a money decree against the mortgagor attached the mortgaged lands in execution of that decree. A receiver was appointed in defendant's execution proceedings by the Revenue Court and possession of those properties was delivered to him in 1927. In 1928 the receiver

the defendant and for possession by ejectment of the receiver. No claim for damages was however made against the defendant in respect of the possession taken by the receiver. The suit was ultimately decreed by the Privy Council in 1933 declaring plaintiff to be entitled to possession. In 1933 the plaintiff brought another suit against the defendant alone. It was therein alleged that the defendant who had obtained a decree against the mortgagor in Revenue Court had obtained the attachment of the properties without caring to find out whether the receiver was a validly appointed receiver.

a sum equivalent to the price of the produce as damages which should have accrued to the plaintiff from the land in dispute. On this basis he claimed a large amount as value of crops from 1927 to 1933.

Held on considering the facts and circumstances that the suit was governed by Art 109 and not by Art 120 led to claim profits only for institution of the suit (Sir

1939
50 L W. 389 =

—Arts 109 and 120—Suit for rents and profits of land to which both plaintiff and defendant have claim—Article applicable. See LIMITATION ACT, ARTS 120 AND 109. AIR 1939 Rang 365

—Arts 110 and 120—Applicability—Suit for damages by purchaser at revenue sale against under-tenure-holder after annulling under-tenure.

If a purchaser at a revenue sale annuls an under-tenure under S 37 of Act XI of 1859, without having

43 C W N 469 = 69 C L J 220 =
AIR 1939 Cal 468

—Arts 113 and 116—Applicability—Registered assignment of mortgage decree—Part consideration left

LIMITATION ACT (1908), Art. 116.

with assignee to be paid to assignor on realization of decree—Suit for—Limitation—If suit for specific performance

Where a mortgage decree for sale is assigned under a registered deed, which provides *inter alia* that part of the consideration money remaining unpaid should be paid by the assignee to the assignor on the assignee realizing the decree, a suit by the assignor for the amount due and interest thereon is suit for compensation for breach of a contract falling under Art. the Limitation Act, and is governed by the six rule of limitation.

ance so
a suit for
J.) SHE
SAHU. 6 B R. 92=185 I C 63=1939 P W N. 769.

—Art. 116—Applicability—'Registered'—Meaning—Personal covenant in mortgage bond—Registration obtained by fraud on registration law—Effect—Suit on bond—Limitation for enforcing personal covenant See REGISTRATION ACT, SS 28 AND 29

20 Pat L T 285

—Art. 116—Applicability—Registered mortgage by agriculturist—Suit on—Claim to personal decree on sale proceeds being insufficient—Limitation—Dekhan Agriculturists' Relief Act, S 72 See DEKCHAN AGRICULTURISTS' RELIEF ACT, S. 72.

41 Bom L R 1

—Art. 116—Applicability—Registered mukar patta—Suit for rent due under—Limitation.

Art 116 of the Limitation Act applies to all case breach of contracts which are in writing and registered. A suit for recovery of rent due under a registered mukarrari patta is governed by Art. 116 and the period of limitation is six years. (Harries C J. and Manohar Lal, J.J.) JANGDHARI SINGH v. BADRI NARAYAN SINGH 1939 P W N 220.

—Art 116—Applicability—Sale deed registered—Consideration reserved with vendee for payment to vendor's minor son on his majority—Suit for same—Limitation—"Trust"—If created. See LIMITATION ACT, S. 10. 1939 M W N 437

—Art. 116—Applicability—Suit for balance of

Failure by mortgagee to pay peshkush—Pay mortgagee—Suit by latter against mortgagee if peshkush paid by him—Limitation—Article 116

A deed of registered usufructuary mortgage dated 27 2 1895, contained a covenant that the mortgagee should pay annually to Government the peshkush due in

Y. D. 1939—49

LIMITATION ACT (1908), Art. 120.

respect of the property mortgaged. In 1914, the mortgagee filed a suit for redemption and got a preliminary decree, but did not pay the amount fixed by the decree before the date fixed. The mortgagee thereupon obtained a final decree for sale of the property on 1-7-1924. The mortgagee however defaulted to pay the peshkush due to Government and consequently the mortgagee had to pay it in order to prevent the property from being sold by Government on 1-6-1932.

however take into account the amount claimed by the

covenant by which the mortgagee undertook to pay the Government peshkush, and the suit, being one for damages for breach of a registered contract, was governed by Art 116 of the Limitation Act and in time, (Leach, C J. and Krishnarwami Ayyangar, J.) DURAI-SWAMI PILLAI v. VENKATA REDDI 50 L W. 889

—Art 117—"Date of the judgment"—Meaning of

The "date of the judgment" in Art 117 of the Limitation Act is the date of the decree, and if there is the

—Art 117—Scope and effect of—Suit on foreign judgment—Cause of action—Suit filed within period of 6 years—Execution of decree barred under law of foreign state—Effect on suit.

Under Art 117 of the Limitation Act, if a suit is filed in British India on a foreign judgment, it is in time, notwithstanding that under the law of the foreign state where the decree was obtained, execution of the decree in that state is barred by time, whether the decree is not enforceable because it is barred by the law of limitation or because it is not relevant to be considered as a judgment. The law where the suit is brought is the law where the obligation of limitation. It does not matter if the judgment is a foreign judgment and a suit can therefore be based on it, and it has to be filed in six years. (Kama, J.) JAISUKHLAL v. MAHOMED HUSSAIN

41 Bom L R 1084=A I R 1939 Bom 522.

—Art 118—Scope

Art 118 applies only to a suit under S. 42, Specific Relief Act, for a declaration that an adoption is invalid

—Arts. 120, 142 and 144—Applicability—Alienage from Hindu coparcener—Suit for partition—Limitation for See HINDU LAW—ALIENATION.

41 Bom L R. 631

LIMITATION ACT (1908) Art 120

—Art 120—Applicability—Bombay Hereditary Offices Act, S 36, proviso (3)—Suit under—Prayer for declaration of right as nearest heir of deceased watan—Limitation See BOMBAY HEREDITARY ACT, S 36 PROVISIO (3) 40 Bom

—Art 120—Applicability—Land ce-
inamdar to Local Board—Suit for recovery of
—Limitation See MADRAS LOCAL BOARDS ACT
S 88 50 L W 466—(1939) 2 M L J 579

—Art 120—Applicability—Money advanced to
guardian for necessities of
ment against minor—Limit
S 38

—Arts 120 and 22
damages by purchaser at revenue sale against under
tenure holder after annulling under tenure See LIMITA-
TION ACT ARTS 110 AND 120 431

—Arts 120 and 2—Applicability—
covery of statutory compensation See
ACT ARTS 2 AND 120 AIR 1939 Lab 583

—Arts 120 and 142—Applicability—Suit for
relief under S 54 Specific Relief Act and for possession
of land

Whether Art 120 or Art 142 would come into opera-
tion depends upon the nature of the relief claimed. If a
gallery of a person's house encroaches upon another's
land he is unquestionably a trespasser in view of the
maxim 'whosoever has the soil, all owns to the heavens
above and to the centre of the earth'. Hence where
the owner of the land on whose land the gallery encroa-
ches brings a suit for relief under S 54 'specific relief

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ment
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—Arts 120 and 62—Applicability—Suit to
recover money wrongfully withdrawn by defendant from
Court

A suit for the recovery of money wrongfully withdrawn
by the defendant from Court by setting up an adverse
title to the claim of the plaintiff, is

Art 120 and not by Art 62 of the
(Syed Nassim Ali and Sen, JJ) K
KALIDAS THAKURSAV

12 R C 104 (2)—69 C L J 108—
AIR 1939 Cal 413

—Art 120—Applicability—Suit to remove un-
authorised mutawalli.

Art 120 of the Limitation Act applies to a suit to
remove an unauthorised mutawalli. If no suit is brought
within six years the *de facto* mutawalli acquires an in-
defeasible title (Skemp J) MST KAMON V ALLAH
BAKHSI 41 P L E 166

—Art 120—Applicability—Trustee liable to
account—Suit for accounts—Limitation See LIMITA-
TION ACT, ARTS 89 AND 120 1939 M W N 360

—Art 120—Declaratory suit—Cause of action—
Plaintiff in possession of property

Where a person is in possession it is not necessary for
him to bring a declaratory suit at once, and each occa-
sion on which his title is challenged furnishes a fresh

LIMITATION ACT (1908) Art 125

—Art 120—Right to sue—Accrual of—Test

The right to sue accrues only when a cause of action
arises. And for a cause of action to arise, it must be

AIR 1939 Lab 6

—Art 120—Starting point—Purchaser of rights
of landlord—Suit to declare entry in record of rights as
nant incorrect and to declare
enhanced rent—Limitation—
final publication of record or
aff

A suit which is essentially a suit for a declaration that

and time begins to run from the date of final publication
of the record of right. The fact that the plaintiff is not
the original landlord but a purchaser of his rights at a
sale in execution does not give him any new cause of
action for the date of the execution sale. The landlord's
right to enhance the rent of an occupancy raiyat corres-
ponds to a statutory incident of the occupancy holding
and passes to his purchaser along with his rights as
landlord. A transfer of this right cannot operate to
create a new right to get the relevant entry in the record
of right declared to be wrong. If the right of the land-
lord be already barred before the sale it can neither be
revived nor created afresh by the plaintiff's purchase
(Dhole and Chatterji JJ) GADADHAR YATRA V
BHOJANATH CHAUDHURY 5 B E 641—
181 IC 651 11 RP 620—1939 P W N 334—
20 Pat LT 303—AIR 1939 Pat 548

—Arts 120 and 109—Suit for rents and profits of
land to which both plaintiff and defendant have claim—
Article applicable

Where profits claimed in a suit are not mesne profits
at all that is not profits wrongly received by the defen-
dants but are the rents and profits of land to which both
have a claim the
Art 109 (Mysa
JAW CHAN THA
AIR 1939 Rang 365

—Art 120—Suit pending—New suit, if brought,
would be suspended till decision of former suit—Right
to sue—If then accrues

It is not obligatory on a man to bring a perfectly vain
litigation with the natural result that it would be met
either by a perfect defence or that the suit would be held
in suspense and await the decision of the appeal in
another suit. Hence the right to sue accrues only on the
decision of the appeal in the other suit (Jai Lal and
Dulip Singh JJ) HARINDAR SINGH V ANANT
RAM 182 IC 342—12 R L 16—
41 P L E 321—AIR 1939 Lab 6

—Art 125—Applicability—'Alienation' meaning
of—Entry of names in the revenue papers followed by
possession—If constitutes an alienation

The word 'alienation' in Art 125 of the Limitation
Act is in the sense of a trans-
fer of the right in the estate
has directly or
right in the estate
on. The entry
in the revenue
the property is
the estate by the

LIMITATION ACT (1908), Art. 131.

widow. (*Iqbal Ahmad, J*) ANANT BAHADUR SINGH v. TIRATHRAJ 181 I O 169 = 12 R A. 187 = 1939 A W R (H C) 411 = A I R, 1939 All 526.

—Art 131—*Applicability—Suit to declare right to hold office with periodical payments attached as against rival claimant—Government made party to suit—Limitation applicable.*

Where the essence of the claim in a suit is the establishment of the title of the plaintiff, as against a rival claimant, to an office to which a remuneration periodical payable by Government is attached, and not the establishment of the liability of the Government to make the recurring payment in question, Art. 131 of the Limitation Act cannot have any application. Government is a party to the suit, if for recovery of specified sums from it all that the plaintiff asks is to obtain Government a decision as to the right and another to an office to which certain emoluments payable periodically by the Government are attached, it cannot be said to be a suit against the Government to establish a right to receive emoluments, because the essential question in the suit is not the liability of the Government to make a payment under a periodically recurring right. (*Wadsworth, J.*) HUSSAIN BATCHA SAHIB v SECRETARY OF STATE 1939 M W N 298 = 49 L W 595 = A I R 1939 Mad 570 = (1939, 1 M L J 476

—Art 131—*Exclusion from enjoyment of right—Time, if begins to run*

Under Art 131 of the Limitation Act the mere exclusion from the enjoyment of a right does not cause time to run, unless the exclusion is the result of a refusal made upon a demand. (*Dobson, F C*) SHIB LAL v CHANDRI RAM 18 Lah L T 5

—Art 132—*Applicability—Mortgage bond—Provision for instalments—Default clause—Limitation—Starting point—Ordinary money bond with provision for default in payment of instalments—Distinction*

In the case of a mortgage bond providing for a due date of payment of the principal and also for the payment of the principal and interest in certain instalments with a default clause, Art 132 of the Limitation Act would apply and limitation would run not from the date of each default but from the due date fixed for payment, although the creditor has an option to bring his suit earlier if he chooses. This distinguishes a mortgage instalment bond from an ordinary money bond providing for payment in instalments with a default clause, falling under Art. 25. (*Port Varma and Manohar Lal, JJ*) GOKHUL v SHEO PRASAD 18 Pat 459 = 183 I C. 523 = 12 R P 167 = 5 B R 965 = 20 Pat L T 443 = 1939 P W N 367 = A I R 1939 Pat 433 (F B)

—Art 132—*Mortgage for a term—Default in payment of interest—Right to sue, when arises*

Where a mortgage is for a definite period it means that during that period neither the debtor is liable to pay nor the creditor is entitled to recover the debt. For the debtor's default during the term of the mortgage to

LIMITATION ACT (1908), Art. 135.

and *Niyogi, J.J.*) SARJU PRASAD v RADRI PRASAD. I L R (1939) Nag 515 = 1939 N L J. 833 = A I R 1939 Nag 242.

—Arts 132 and 120—*Suit under U P Municipalities Act, S 177—Article applicable See U P MUNICIPALITIES ACT (1916), S. 177.*

1939 A W R. (H C) 261.
—Art 132, Expl (a)—*Applicability—Term 'Malikana' if applied to under proprietary rent in Oudh.*
The term 'Malikana' occurring in Expl. (a) to Art. 132 of the Limitation Act though it has not been defined in the Limitation Act cannot be applied to the under-proprietary rent payable by an under-proprietor in Oudh.

—*Proprietor, for what he is liable to pay is Oudh Rent Act (Zia ul Haq, J.)*
INGAM LAL 14 Luck 467 = 1 = 11 R O 160 = 1939 O A 108 = 1368 = 1938 A W R C C 115 = 1939 O L R 53 = 1939 R D 50 = A I R 1939 Oudh 57.

—Art 134 A—*"Plaintiff"—Meaning of—Representative suit on behalf of general body of villagers—Knowledge of plaintiff—If means of knowledge of all the villagers*

The word "plaintiff" in the third column of Art. 134 A of the Limitation Act must, in the case of a representative suit brought on behalf of the general body of worshippers or beneficiaries or persons interested in an institution, be understood to refer only to the plaintiff or plaintiffs *ex nomine* on record, and cannot be taken to mean every individual member of the community or body of persons who are represented by the plaintiff or plaintiffs on record. (*Patanjali Sastri, J.*) SRI VEERABHADRASWAMI v MAYA KONE 1939 M W N 1137 = 50 L W. 658 = (1939, 2 M L J. 920.

—Art. 134 B—*Mokarari lease by mohant—Suit by successor for assessment of fair and equitable rent—Limitation.*

A suit by a mohant for assessment of fair and equitable rent of a property of the deity of which a mokarari lease was granted by his predecessor, after declaration that the mokarari settlement was void after the death of his predecessor is barred by limitation when 12 years have passed from the death of the grantor of the lease. (*Jark, J*) TIRANDAS MOHANT v RAM KISHORE 43 C W N. 437.

—Arts 185 and 75 and Ss 19, 20 and 21—*Suit by mortgagee for possession*

M and S, two brothers executed two mortgage deeds in respect of certain land on 25th January 1919, in favour of A. The mortgages were without possession and were not for any fixed period. It was stipulated on the one hand that the mortgagors could at any time redeem on payment of the principal and interest up to date and on the other hand that on failure for one year or more of payment of the annual interest in respect of each mortgage the mortgagee would be entitled to take possession. For a period of five and a half years no interest was paid. On 28th August, 1924, however, M

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apply

LIMITATION ACT (1908), Art. 139.

a mere acknowledgment, S. 19, Limitation Act, also did not apply (c) That Art 75 was also in terms inapplicable. Although there was a default from 25th January, 1920 to 28th August, 1924, that default was wiped out by the satisfaction of it by the mortgagors by execution of the deed of 1924 and the mortgage was satisfied by the mortgagees by the execution of the deed of 1924. The mortgage was not renewed by the mortgagees and no new mortgage was created.

such was accorded
was no question

whatever of the original period of limitation being extended under S 20 or S 19 or of its having in any way been suspended under S 9. It was immaterial whether the mortgage was renewed or not.

—Art 139 and S 20. The mortgage was not renewed.

the tenant has not denied the landlord's title, if he has not been paying any rent and there is nothing to show that the landlord assented to his continuing in possession after the expiry of the lease (Sale, *LAL v. HUSSAIN*).

AIR

—Art 140—Dispossession of property when in last male owner's possession—Burden of proof.

—Arts. 141 and 144—Applicability—Property of Hindu held by widow—Nearest reversioner taking no steps to take possession or assume control of property on death of widow—Son of such reversioner in occupation prior to widow's death—Suit by other sons of reversioner after widow's death—Applicability.

The suit house belonged to his widow *M* and his elder son *A* who was the next reversioner without taking possession or control of the house. The first respondent who was one of the five sons of *A*, was in possession of the house along with *M* during her lifetime and exclusively after her death. The appellants who were some of the other sons of *A* brought a suit in 1933 for partition and separate possession of their share of the house, claiming to be entitled thereto as sons of *A* who was the nearest reversionary heir on the death of *M*.

Held, (1) that the proper article applicable to the suit was Art. 141 and not Art. 144 of the Limitation Act, and therefore no question of adverse possession would arise; (2) that *M*, having died in 1891,

LIMITATION ACT (1908), Art. 142.

and there being nothing to show that *A*, who was then entitled to succeed to the property ever took possession or assumed any kind of dominion or control of the house or permitted the 1st respondent and his descendants to continue in occupation thereof, t. 141, and a years there stand extinct and (3) the bare on the

Dispossession of property

—Art 142 and 144—Applicability—Conditions—

624=185 IC 108= AIR 1939 Nag 260.

Applicability—Alienation from other coparceners—If LAW—ALIENATION. 41 Bom LR 631.

—Arts 142 and 144—Applicability—Conditions—Dispossession or disquiet

under Art. 142, the plaintiff but also possession within 12 years of suit. But before that article can apply, it must be shown, either that the plaintiff was dispossessed, or

—Arts 142 and 144—Applicability—"Dispossession"—"Dispossessed"—Meaning of—Owner not taking possession of chut—If can be deemed to have been dispossessed.

begin to occupy after the withdrawal. Dispossession signifies expulsion, an adverse act which has the effect of putting out. It presupposes physical contact, a collusion, either with another person or with his physical acts. The physical presence on the property of the person affected is not necessary but the adverse act of the other party must have the quality of destruction. Acts of possession of the former must be effaced by the latter. On these concepts it would be difficult to say that the rightful owner, who is only presumed to be in possession, till a *chut* becomes fit for enjoyment, is dispossessed simply because he does not take possession as soon as it

LIMITATION ACT (1908). Art. 142.

LIMITATION ACT (1908). Art. 144.

applicability—Suits on
like, if governed by Art.it is very general in its
scope, as the article is

from.

Where the claim of plaintiff for possession is his title and not on possession and dispossessed defendant pleads adverse possession, Art applicable. Burden is on defendant to prove possession. A I R 1934 Lah 576, Foll (*Abdul Kader, J.*) MEHTAB SINGH v. DAYAL SINGH 183 I C 140 = 12 R L 99 = 41 P L R 715 = A I R 1939 Lah 172

—Art 142—'Dispossession' and 'discontinuance'—Meaning of.

tenancy mortgagee and for possession—Mortgage prohibited by S 203 (3) of the C. P. Land Revenue Act—Article applicable See C. P. LAND REVENUE ACT, S 203 (3) 1939 N L J, 136.

—Art 142—Suit under—Burden of proof—Independent trespassers in continuous possession for

continuing has given up the land and left it to be possessed by any one choosing to come in. There must be an intention to abandon title before there can be said to be a discontinuance of possession. But this cannot be assumed. It must be either admitted or proved. So

brought by the plaintiff, which falls under Art. 142, must be held to be barred by limitation. (*Addison*)

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—Arts 144 and 120—Co owners—Suit for joint
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urposes. Defendant appropriated the land to be his exclusive property. Plaintiff filed a injunction restraining the defendant from with his rights of grazing and also for joint

LIMITATION ACT (1908), Art 144

Held that in the circumstances of the case it would have been sufficient for the plaintiff to sue merely for joint possession and hence the suit was governed by Art 144 at least so far as the claim for joint possession was concerned (*Bhide, J*) **SEWA SINGH v RAGHU NANDAN** AIR 1939 Lah 315

—Arts 144 and 91—*Sham sale deed—Suit for possession by vendor—Article applicable*

Where a sale deed is a mere paper transaction and inoperative a suit by the plaintiff for joint possession is governed by Limitation Act (*BASANT KAUR v I*)

AIR 1939 Lah 544

—Art 145—*Applicability—Money deposited by employee with employer as security for good conduct—Death of employee—Suit by heir to recover—Limitation applicable*

A suit by the heir or legal representative of a deceased employee for recovery of a sum of money deposited by the employee with his employer as security for good conduct is not governed by Art 145 of the Limitation Act. The article was never intended by the Legislature to apply to such (*Manohar Lal, J*) **RAJ MT. BACHIA KUARI**

—Art 146 A—*A S 364 (1) Calcutta M*

An application under Act, is plainly not a suit, which applies only to suits cannot apply to such an application (*Bartley and Rau, JJ*) **CORPORATION OF CALCUTTA v DULAL CHANDRA PRAMANIK** 184 IC 189 (1) = 12 RC 212 (1) = 40 Cr LJ 870 = AIR 1939 Cal 470

—Art 148—*Applicability—Transfer by son only of co-mortgagors of the equity of redemption to the mortgagee—Suit by others—Nature—Limitation See MORTGAGE—CO MORTGAGORS*

1939 OWN 1045

—Art 156—*Order appointing guardian not conditional on furnishing security—Starting point—Date of*

accepted and the period of limitation the date of the order. (*Bhide, J*) **BISHAMBER DAS**

AIR

—Art 164—*“Due service of su for substituted service—If due service—C P Code, O 5, R 20 (2) and O 9 R 13*

The Court was held that the defendant had knowledge of the decree against him except of course in the case where the defendant had purposely put it out of his power to have such knowledge. Consequently substituted service of summons effected in proper manner is not necessarily due service for the purpose of Art 164 of the Limitation Act. The word “effectual” in O 5 R 20 (2) C P Code only means that the Court hearing the case may proceed with the suit as if

LIMITATION ACT (1908), Art 181.

the summons had been served on the defendant (*CHETT*)

S 47, C P Code

Article 166 Limitation Act, applies to an application under O 21, R 90, C P Code and there is no article applicable to an application under S 47 C P Code, of course such an application must be made in Court is still seized of the proceedings (*and Ram Lal, JJ*) **RAM CHANDAR v I L R (1939) Lah 103 = 184 IC 393 = 12 RL 718 = 41 PLR 436 = AIR 1939 Lah 113**

—Arts 166 and 181—*Applicability—Decree against assets of deceased in the hands of judgment-debtor—Sale—Application to set aside—Allegation that property sold belongs to applicant and not to deceased—Limitation—Art 181—Applicability*

Art 166 of the Limitation Act applies to an application to set aside an execution sale made by a party to the decree on the ground that the property sold belongs

deceased or not (*Harries, C J and Rowland J*) **CHHAKU PANDA v NEMAL PRASAD PANDA** 5 CLT 22

—Art 166—*Scope—Deposit of 12 per cent of security if to be made within 30 days of sale See C P CODE O 21 R 90 (1) (AS AMENDED BY PATNA HIGH COURT) PROVISIO (1) (a) AND (b)* 20 Pat LT 275 (FB)

—Art 167—*Fresh writ issued on fresh obstruction—Limitation*

A separate right arises on each occasion when there is obstruction provided a fresh writ for possession has been issued from the time of on in respect of 13 CWN 724 (*H V RAJNATH*) 1939 Cal 494

lies only to the R 2 cation AIR v 668 = 581

—Art 181—*Applicability—Decree against assets of deceased in the hands of legal representative—Sale—*

against several defendants—Application for the appeal by some defendants—Stay of execution on deposit of decree amount by appealing defendants—Decree holder drawing out money on security—Appeal allowed—Decree confirmed against non appealing defendant alone—Execution against latter—Limitation applicable—Starting point

The respondent obtained a decree against the appellant (2nd defendant) and two others (defendants 3 and

LIMITATION ACT (1908), Art. 181.

4) on 25-2-1928 and applied to execute the same. The two others, who were defendants 3 and 4, appealed against the decree and applied for a stay of execution. On 16-10-1928, the their depositing the c they did. The responde drew the amount from the same, and satisfaction of the decree was entered up. On 21-10-1929, the appeal of defendants 3 and 4 was allowed, they being exonerated without costs of lower Court and the decree against the appellant confirmed. The respondent filed an application 9-8-1931 to execute his decree against the appellant, contending that since he paid the amount withdrawn by him to the defendants 3 and 4 by way of restitution on 20-6-1933, his right to execute the decree against the appellant accrued only on that date under Art. 181 of the Limitation Act.

1939 M W N 305-49 L W. 483=
A I R 1939 Mad 441=(1939) 2 M L J 271

—Arts. 181 and 183—Application for final decree in mortgage suit—Limitation.

An application for a final decree barred by limitation under Art. 18 Act if made more than three years preliminary decree passed under Code. Such an application is not one to enforce the preliminary decree and Art. 183 i cable. (*M. Nair, J*) SISIR SRISH CHANDRA SINHA

—Art. 181—Application for point—Order setting aside decree a

An application for restitution under S. 144, C. P. Code, is governed by Art. 181 of the Limitation Act, and time would run from the date of the order setting aside the decree and not from the date when that order is affirmed in appeal (*Derbyshire, C J and Mukherjee, J*) BHABARANJAN DAS DEWRI v NIBARAN CHANDRA GUPTA 183 I O 30=12 R C 148=69 C L J 293=43 C W N 515=

A I R. 1939 Cal 349

—Art. 182—Applicability—Application for restitution—Limitation—Starting point of limitation—Date of reversal of decree or date of fresh decree made on remand.

An application for restitution under S. 144, C P Code, must be regarded as an application in execution and is governed for purposes of limitation by Art. 182 of the Limitation Act, and a claim for restitution must therefore be made within three years from the date on which the right to make the claim arises upon reversal of the decree in question, an application for restitution can be made. But when that is not done, and the rights of parties have to be decided afresh in the suit, the cause of action would arise on the date when a decree is passed on remand upholding the claim of the party seeking restitution. (*Wissandew, J*) GANPAT GATLU v NAVNITIL RANCHHODAS 41 Bom L R 1204

—Art. 182—Applicability—Application under O. 21, R. 52 (2), C. P. Code—If one in execution.

LIMITATION ACT (1908), Art. 182.

An application for leave to execute a decree against a partner under O. 21, R. 52 (2), C P. Code,

—Art. 182—Applicability—Award by Registrar of

the Madras Co-operative Societies Act is Art. 182 of the Limitation Act. (*Venkataramana Rao, J*) SUBBA RAO v CALICUT CO-OPERATIVE URBAN BANK, LTD.

49 L W 143=1939 M W N 397=

A I R 1939 Mad 304=(1939) 1 M L J. 695.

—Art. 182—Applicability—Partition suit—Lands referring parties to send papers C. P. CODE, Bom L R 921. point—Execution and on appeal nd—Application tion, See C. P. 1939 Nag. 101.

in form under O 21, R 11 but really under S. 39, C. P. Code—Return for amendment and furnishing of not necessary papers—Non compliance with—Fresh application under S. 39—Prior application, if required.

in form was one under the request therein was ode, and it is returned for y papers and making of certain amendments, which were not made and the

is entitled to have his later application treated as a request that the earlier application be proceeded with. (*Hamilton and Yorke, J J*) PEAREY LAL v SHFO SARAN 180 I O 471=11 B O 245=

1939 O L E 141=1939 O W N 267=

1939 O A 296=A I R 1939 Ondh 118.

—Art. 182—Reversal—Court ordering sale to be held by Nair—Latter reporting absence of decree holder on date of sale—Order dismissing execution application for default—Subsequent application—If one in continuation

In an execution case the Court ordered that the sale of the property was to be held on a certain day by the Nair. The latter made a report that the decree holder was absent on the day of the sale. Thereupon the Court passed an order to the following effect "The decree-holder takes no steps. Dismissed for default."

Held, that there was no default on the part of the decree holder, that the order of Court, though in form was an order for dismissal for default, must be taken in substance to be an order for removing the case from the pending file of cases, and that a subsequent application for execution must be treated as a continuation of the previous application and was not therefore, barred by limitation. (*Vitter and Kunnakar, J J*) SARADA SUNDARI v IABBAR ALI 184 I O 151=

12 R C. 210=69 C L J 165=43 C W N 429

A I R 1939 C

LIMITATION ACT (1908), Art. 182.

—Art 182—*Revival—Execution case struck off as old—Subsequent application—If one in continuation.*

Where an execution case was struck off on the ground that it became old and the decree-holder was awarded costs, the execution case was only removed from the pending file for the convenience of the Court. A subse-

be held
applica
PRIYA

69 C.L.J. 288=43 C.W.N. 519=
A.I.R. 1939 Cal 471

concerned. (*Rachpal Singh and Mohammad Ismail, Jf.*) **RISAL SINGH v LAL SINGH**

I.L.R. (1939) All 728=183 I.C. 685=
12 R.A. 157=1939 A.L.J. 746=

1939 A.W.R. (H.C.) 640=A.I.R. 1939 All 483

—Art 182—*Step-in aid—If can be taken before application for execution*

A step-in aid of execution can be taken before an application for execution of the decree has been made in Court. (*Rachpal Singh and Mohammad Ismail, Jf.*) **RISAL SINGH v LAL SINGH**

I.L.R. (1939) All 728=183 I.C. 685=
12 R.A. 157=1939 A.L.J. 746=

1939 A.W.R. (H.C.) 640=A.I.R. 1939 All 483

—Art. 182—"Where there has been an appeal"—*Meaning of.*

It is not an appeal which is meant by Art 182 of the

LIMITATION ACT (1908), Art. 182.

—Art. 182 (2)—*Applicability—"Appeal"—Applica-
tion to cancel order of satisfaction of decree—If one
for decree—Appeal from order thereon—If appeal
from decree—Decree—If suspended during appeal.*

It is definitely established that that Cl (2) of Art. 182 of the Limitation Act has no application to appeals other than appeals against the decree itself. It does not apply to appeals from orders in collateral proceedings which may affect the decree to be executed. An application to cancel or modify an order recording satisfaction of a decree and to revive it, cannot be regarded as an application for the decree itself, so as to make Art. 182

A.I.R. 1939 Mad 600

—Art. 182 (2)—*Applicability—Decree against
several defendants—Appeal by some only—Stay of exe-
cution pending appeal—Deposit of decree amount—
Withdrawal by decree holder on security—Appeal
allowed—Decree confirmed against non appealing
defendant only—Execution against latter—Limitation
—Starting point. See LIMITATION ACT, ARTS 181
AND 182 (2)* 1939 M.W.N. 305.

—Art. 182 (4)—*Scope—If controls S. 48, C. P.
Code—Amendment of decree—If extends 12 years
period. See C. P. CODE, S. 48* 18 Pat 395

—Art 182 (5)—*Application in accordance with
law—Application to decretal Court after transfer of
decree to another Court*

After a decree has been transferred to another Court for execution, the proper Court to which a subsequent

—Art 182 (5)—*Application in accordance with
law—Execution application filed after debtor's invol-
vency without leave of Court*

Where, after the decree-holder has obtained a decree against a debtor, the debtor becomes insolvent, the decree-holder makes an application for execution of the decree without leave of Court. Such an application is not a fresh application and the Court is not bound to grant leave of Court. A suit cannot be said to be steps in aid of execution taken

—*Plaint in suit under O. 21, A. O. 1, C. P. Code.*
A suit under O. 21, R. 63, C. P. Code, cannot keep the execution proceedings pending when there has been a decree of the Court dismissing the application for execution and re-attach the property. Therefore a plaint in such a suit cannot be treated as an

—*Final decree pending appeal—Subsequent dismissal of
appeal—Execution application—Starting point—Date of
final decree or date of appellate decree—Fresh final
decree—Necessity*

holder applied for execution of the final decree.

Held, the period of limitation for execution ran from the date of the appellate decree, and not from the date of the final decree which was paid pending the appeal and was therefore within time

Held, further, that a fresh application for a decree or amendment of the original decree was unnecessary, because the validity of the final decree passed was not affected by the appellate decree which was set aside.

LIMITATION ACT (1908), Art. 182.

application within the meaning of Art. 182 (5). Nor can the filing of such a suit be treated as an application for execution to the proper Court in the case of the suit in Court which has a decree or in some other Court in a fortuitous circumstance of the property. (*Roberts, C.J. and L.*)
MAUNG V. V. K. CHETTYAR
 185 I.C. 70 = A.L.J. 400 (1915)

—Art 182 (5)—Bona fides of decree-holder—If material.

Under Art. 182 (5) of the Limitation Act, it is suffi-

LIMITATION ACT (1908), Art 182

thing, and an order cannot be called a final order unless it puts an end to something or other. An order return-

proper time.

Stodart, J.—Art. 182 (5) does not seem to provide for the case where an order is passed on a defective application, the order may be made by the Court at

41 P.L.R. J & K. 31

—Art. 182 (5)—Bona fides of material.

Application for execution by judgment debtor, made merely for the purpose of extending the limitation are legal, and do operate to extend the time for execution of the decree.

joined with a certain time falls altogether outside the

—Art 182 (5)—"In accordance with law"—Application though must mention previous applica-

down by the Legislature for its assistance must be whether that application

proceedings.

—Art 182 (5)—"In accordance with law"—Application to transmit decree for execution to Court not in

Act begins to run from the date of that order. Proceedings cannot be said to be kept pending till the date of his release from jail (*Baguley, J.*) **BOOMIAH V. R M N R M CHETTYAR FIRM.**

1939 Rang L.R. 508 = A.I.R. 1939 Rang 406

—Art 182 (5)—"Final order"—Order return on defective execution application of

"Final" in Art. 182 (5) of the Act is to be interpreted as being merely the word involves the notion of p

Y. D. 1939—50

believes to exist is one "in accordance with law." A mistake in the description of the Court to which the decree-holder requests that his decree may be transferred is a mistake of fact, and cannot make the applica-

LIMITATION ACT (1908), Art. 182

—Art 182 (5)—'In accordance with law'—Execution application—Correct number of suit not given—Return for amendment—Failure to amend and re present within time—Re presentation after limitation along with fresh execution application—Dismissal order—If saves limitation—Fresh application

An execution application which does not contain the correct number of the suit the decree in which it is proposed to execute, cannot be deemed to be an application in accordance with law. It has no judicial existence after it is returned without being filed for rectification, and if it is barred by limitation when re-presented any order passed upon it, dismissing it subsequently cannot avail to save limitation for a fresh execution petition presented contemporaneously. (*Wadsworth J*) G R
NAIDU v VENKATASWAMI NAIDU 60 L W 793:
1939 M W N 1206:-(1939) 2 M L J 864

—Art 182(5)—¹ In accordance with law—Hindu joint family—Decree against father and minor sons—Insolvency of father—Application for leave of Insolvency Court praying for after notice to the defendants—Subseq after discharge of father for his arrest—It is in accordance with law and steps in aid

An execution petition presented by a decree holder prayed for arrest of the 1st defendant who was a Hindu father after issue of notice to the defendant the other defendant, being the minor sons of the 1st defendant. The 1st defendant was then an undischarged insolvent and the decree holder had not obtained an order from the Insolvency Court to file the execution application. After the father was discharged the decree holder again applied to execute the decree by arrest of the 1st defendant.

Held (1) that the 1st petition presented without the leave of the Insolvency Court as required by S 2^a (2) of the Provincial Insolvency Act was not in accordance with law (2) that the petition requesting the issue of a mere notice to the defendants before issuing a warrant of arrest against the 1st defendant could not be described as an application to take a step in aid of execution (3)

judgment debtor, under s 44 (4) of the Insolvency Act, was released from all debts provable under this Act (2)

RAMASWAMI IYER

—Art 182 (5)—*Interpretation—Two of time*

S 182(5) of the Limitation Act gives two landmarks of time from which the period of limitation can run. One is the date of the final order passed on an application made for execution and the other is the date of the final order passed on an application made to take some step in aid of execution. (Baguley, 1983, p. 125)

—Art 182 (5)—*Proper arrest of judgment debtor*

Where it has
knew that the ju
diction and the
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be said that the
Court (*Mva Bu and Mostly, JJ*) P L S P
CHETTYAR v U THAN I'E 181 IC 769-
AIR 1939 Rang 346

LIMITATION ACT (1908), Art 182

—Art 182 (5)—*Proper Court*—*Decree transferred to another Court for execution*—*Application to Court transferring decree*—*If step in aid*

Where the Court which passed the decree has transferred the decree to another Court for execution at the request of the decree holder, a subsequent application by the decree holder for execution to the transferring Court is not an application to a "proper Court" within the meaning of Art 182 (5) of the Limitation Act and is not therefore a step in aid of execution (*Wort, Ag C J and Manohar Lal, J*) KAMAKHYA NARAIN SINGH v KALI PADO DUTT.

180 IC 81=5 BR 333=11 RP 445=
20 Pat LT 356=A IR 1939 Pat 259
—Art 182 (5) - 'Proper Court'—Decree—Transfer
for execution to another Court—Application to
transferor Court to recall execution—If saves limita-
tion

A Court which transfers a decree to another Court for

Court to recall the proceedings from the transferee Court is therefore one made to a "proper Court," and is a step in aid of execution which saves limitation under Art 182 (5) of the Limitation Act (*Fazl Ali and Agar*

surety for his arrest

An application against a surety for his arrest is a step in aid of execution of the decree within the meaning of Art 182, so as to bring a subsequent application for execution within time against the original judgment-debtor (*Tek Chant and Dulsip Saneh JJ*) KISHAN SINGH v PREM SINGH AIR 1939 Lah 587

— Art 182 5) — Step in aid — Application for final decree after final decree has already been passed

An application for a final decree made by mistake after a final decree had already been passed is not a
(Derbyshire, C.)
ON OF CALCUTTA
3-12 BC 161-
70 CLJ 320-43 C W N 800-
AIR 1939 Cal 488

—Art 182 (5)—*Step in aid—Application for sale of property handed over by judgment debtor to his son*

ISHAR DAS 41 P L R 577

—Art 182 (5)—Step in aid—Application to cancel order recording satisfaction of decree and to revive the decree—If step in aid

An application for modifying or cancelling an order
 decree,
 cannot
 decree
 judicial
 ITI v
 497 =
 I R 1939 Mad 892
 —Execution *applica*
 not re presented — If

It is not permissible for a decree holder to extend the period of limitation by simply failing to represent an execution petition returned for rectification. The pro-

LIMITATION ACT (1908), Art. 182

per way to deal with such a petition as that is to treat it as not having come into existence at all. (*Burn, J*)
MUNICIPAL COUNCIL, TANJORE v. SUNDARESAN.

A I E

—Art 182 (1)
Application for execution
self liable for the

An application asking the proper Court to execute the decree against the surety who has made himself liable for the satisfaction of the decree, amounts to asking the execution Court to take a step in aid of execution of the decree as against the principal whose liability the surety had taken upon himself, under Cl. 5 of Art 182 of the Limitation Act. (*Bennet and Verma, J J*) SURAJ DIN v. FIRM NARAIN RAO PERNESHWARI PRASAD.

• I L R (1939) AIL 538 = 183 I C 446 =
12 R A. 136 = 1939 A L J 415 =

1939 A W R (H.C.) 329 = A I R. 1939 AIL 463

—Art. 182 (5)—Step-in-aid—Execution—petition returned for a nemdum but not re presented within time—If save limitation

An execution petition which is returned for amendment and which is not re-presented within the proper time cannot save limitation as a step-in aid under Art 182 (5) of the Limitation Act. Such a petition must properly be started on or before the time when the decree is returned for amendment.

J J CHIDAMBARAM CHETTIAR v. MURUGESAM PILLAI
1939 M W N. 769 = 50 L W 311 =
A I R. 1939 Mad 831 = (1939) 2 M L J 671.

—Art 182 (5)—Step-in-aid of execution—Unnecessary application for final decree—When a step in aid of execution.

Where in a compromise decree for partition an application is made for a final decree and it is dismissed as unnecessary, it could be relied upon as a step in-aid of execution. For the decree-holder was asking the Court to make an order which was thought necessary before taking out execution, and the ultimate object of the petition was to hasten the realisation of the decree debt (*Zet ul Hasan and Yorks J J*) RAJAHNATH SINGH v. SUBYDAR SINGH 14 Luck 453 = 180 I C 113 =
11 R O 232 = 1939 O A. 215 = 1939 O L R. 114 =
1939 O W N 219 = A I R. 1939 Oudh 155

—Art 182 (5)—Step-in-aid—Plaint in suit for declaration that certain property is attachable

Obiter—Art 182 (5) of the Limitation Act speaks of an application to take some step in-aid of execution made to the proper Court, that is the Court whose duty it is to execute the decree. It would not include a plaint in a suit for declaration that certain properties are liable to be attached in execution of the plaintiff's decree against his judgment-debtor (*Mitter and Khuntkar, J J*)

'Such date'—Meaning of

An application to enforce a payment directed by a maintenance decree to be paid at a certain date falls under S 182 (7) of the Limitation Act. The words 'such date' in the clause refer to the date on which a default is made. On the occasion of each default the decree holder would be entitled to enforce his claim (*Srinivasa, J*)

BAN. 183 I
1939

LOWER BURMA LAND REV. ACT (1876), S 19.

—Art 182 (7)—Instalment decree—Default clause—Decree holder's option—Limitation—Starting point.
Where an instalment decree contains a default clause

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default clause on pain of losing further instalments due to him. There is no reason why the judgment-debtor seeking to take advantage of his own default should be allowed to require the decree holder to prove condonation of the default. If the decree holder says that he did condone the default, then in the absence of evidence or conduct by the decree holder proving the contrary, his statement should be accepted. Hence where the decree-holder has failed to take advantage of the default clause, his right to recover instalments due to him within three years of the application for execution is not barred, (*Davis, J. and Weston, J*) I EKHRAJ SIRUMAL v. KHUBCHAND. 180 I C 933 = 11 R S 194 =
A I R. 1939 Sind 49.

—Art 183—Applicability—Preliminary mortgage decree affirmed on appeal by Privy Council—Final decree passed pending appeal—Execution—Limitation

If the preliminary mortgage decree on which the final decree is based is affirmed by the Privy Council on appeal, from the preliminary decree, the effect of the order of the Privy Council is not to destroy but to affirm the final decree passed during the pendency of the appeal, and the time within which the final decree could be enforced is 12 years from the date of the order of the Privy Council by reason of Art 183 of the Limitation Act (*Derbyshire, C J and Nasim Ali, J*) BHOLA-NATH SEN v. JUGENDRA MOHAN
I L R (1939) 1 Cal 477 = 69 C L J 355 =
43 C W N 401 = A I R. 1939 Cal 601

—Art 183—Decree relating to costs—Execution—Limitation—Starting point—Date of judgment or date of assessment of costs

According to law decree bears the same date as the judgment, and the right to enforce the decree under Art 183 of the Limitation Act would *prima facie* accrue from the date of the judgment. Ordinarily, preparation of the decree (including assessment of costs) does take a little time but there is no provision of law allowing this time to be deducted in computing the period for an application for execution (*White, J*) KUGHNATH & CO. v. RAM GOPAL ROHIT RAM
I L R (1939) Lah 319 = 182 I C 871 = 12 R L 78 =
41 P L R. 105 = A I R. 1939 Lah 110.

—Arts 183 and 181—Execution against legal representative of judgment debtor—Application for leave—Article applicable

An application for leave to execute a decree against the legal representatives of the judgment debtor is governed, not by Art 181 but by Art 183 of the Limitation Act. (*Sen J*) GOBINDA NATH SHAHA CHAUDHURI v. DURGA NARAYAN SHAHA I L R (1939) 2 Cal 173

LOWER BURMA LAND REVENUE ACT (II OF 1876) S 19—Rule 51—Possession of occupier of available land—Nature of 'Execution'—What amounts to

Under Rule 51 of the Rules framed by the Local Government under S. 19 of the Lower Burma Land Revenue Act, the possession of an occupier of available land, who has not yet become a "landholder", is purely permissive. He holds it at the pleasure of the Government and is liable to be evicted at any time before he becomes a landholder. The Government may in the original occupant, some one else, or may in the *de facto* occupation of some one else, who

LUNACY ACT (1912), S 65

has come to occupy the land instead of the original owner. The word 'eviction' in Rule 51 does not refer merely to a purely physical eviction. What it really means is the termination by the Government of the permissive relationship arising under the rule. If the Government does anything which unequivocally points to its intention no longer to recognise the permissive occupation of any particular occupier, then it has 'evicted' that particular occupier within the meaning of the rule. Accordingly a refusal by the Deputy Commissioner to recognise any more title out of possession, as the occupant of the land and the defendant as the Government that land amount in substance by the Government of the patta under Rule 51 (*Braund J*) MAUNG E MAUNG v R M N L V FIRM (1939) Rang L R 185-183 I C 533-12 E R 81-AIR 1939 Rang 275

LUNACY ACT (IV OF 1912) Ss. 65 and 67 (2)—Unsoundness of mind—Degree—Duty of Court in relation to persons of unsound mind

For purposes of S 65 of the Lunacy Act the degree of unsoundness of mind of a person has to be found in relation to his capacity to manage the affairs of his estate. Where it is found that a person could not look after property whether big or small but could at best

MADRAS ACTS AND RULES AND TIONS

Agency Tracts Interests and Law Act I of 1917)
Agriculturists Relief Act (IV of 1938)
Board of Revenue Regulation (I of 1903)

District Municipalities Act (V of 1920)
District Police Act (XXIV of 1859)
Elementary Education Act (VIII of 1920)
Estate Land Act (I of 1908)
Forest Act (V of 1882)
Gaming Act (III of 1930)
Hereditary Village Offices Act (III of 1895)
High Court Rules (Appellate Side)
High Court Rules (Original Side)
Hindu Religious Endowments Act (II of 1927)
Impartible Estates Act (II of 1904)
Irrigation Cess Act (VII of 1865)
Local Boards Act (XIV of 1920)
Maramakkathayam Act (XXII of 19 S)
Motor Vehicles Rules (1938)
Nambudri Act (XX of 1933)
Prevention of Adulteration Act (III of 1918)
Prohibition Act (X of 1937)
Proprietary Estate Village Service Act (II of 1894)

MADRAS AGRIC RELIEF ACT (1938), S 4

Suppression of Immoral Traffic Act (V of 1930).

Survey and Boundaries Act (VIII of 1923)

MADRAS AGENCY TRACTS INTERESTS AND LAND TRANSFERS ACT (I OF 1917) S 6—Applicability and construction—Marriage by member of Hill tribe of land situate outside Agency tract—Suit on—Jurisdiction of ordinary Civil Court

The law relating to Agency tracts has no application to suits relating to rights in property situated outside the

because one party is a member of a hill tribe (*Wadsworth, J*) AMMANNA v RAJA REDDI

50 L W 893-1939 M W N 1195

MADRAS AGRICULTURISTS RELIEF ACT (IV OF 1938)—Scope—If ultra vires—Repugnancy to Negotiable Instruments Act Usurious Loans Act and Hindu Law of Debts—Extent and effect of *See* GOVERNMENT OF INDIA ACT (1935), Ss 100 AND 107. (1939) 1 M L J 272 (F B)

—S 3, Proviso 3—Construction—Aristid—Meaning of

The proviso to S 3 of the Madras Agriculturists' Relief Act only

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found in the assessment register To so

—S 4 (c)—Applicability—Chatram administered by local authority—Lessee of—Right to apply under Act
Income from endowments and trusts such as chatrams, whose administration has been made over to a local authority must be regarded as income of the local authority

TANJORE v PONNUSWAMI PALLAVARAYAR.

50 L W 503-1939 M W N 972-
(1939) 2 M L J 818

—S 4 (d)—"House property"—Confound of house—Vacant ground within—If house property

Vacant ground which is a part of the compound of the house property, is 'house property' under S 4 (d) of the Madras Act IV of 1938, 'house property' will normally include the site on which the building stands and the garden, compound or yard attached thereto (*Wadsworth J*) NAMASIVAYA MUDALIAR v SKINIVASA IYENGAR

50 L W 578-
1939 M W N 1148-(1939) 2 M L J 782

—S 4 (d)—House property, meaning of.

The term 'house' includes the land appurtenant to the house and necessary for its enjoyment. But a vacant piece of land which is a separate unit with no building upon it, though destined for building purposes, would not be properly 'house property' within the meaning of S 4 (d) of the Madras Agriculturists' Relief Act (*Wadsworth J*) PONNAMBALAM CHETTI v RAMAN CHETTI

L.R. (1939) Mad 943-

MADEAS AGRIC. RELIEF ACT (1938), S. 4

1939 M.W.N. 731 = 50 L.W. 181 =

A.I.R. 1939 Mad. 789 = (1939) 2 M.L.J. 233.

—S. 4 (f)—Applicability—Mahomedan co-heirs—Liability of co-heir in management to account to others—If 'debt'—Liability to pay interest.

The relation of co-owners, such as co-heirs under Mahomedan law, is not that of creditor and debtor. The liability to pay interest will arise in such co-owner in possession of the common interest by their investments. The owner in management to account to a "debt" within the meaning of Mac (1938). The case is taken out of the Act. (*Varadaharari MOTTAI MEERA v. CHINNA ROWTHER*).

1939 M.W.N.

A.I.R. 1939 Mad. 4

—S. 8, Expl—Applicat

Renewal or inclusion in fresh document—If to be by the same debtor

The Expl. to S. 8 of the Madras Agriculturists' Relief Act speaks first of a renewal which is obviously by the same debtor. Then come the words "or included in a fresh document". Inclusion in a fresh document must be obviously by the same debtor. The explanation is that the debt or includes under the old document would apply. (*Son In re*).

—S. 9—Applicability—If confined to liabilities under contracts.

Though the word "incurred" in S. 9 of the Madras Agriculturists' Relief Act suggests the idea of a liability voluntarily incurred, the terms of cl. 1 of that section

MADEAS AGRIC. RELIEF ACT (1938), S. 19.

—S. 19—Application under—Order on—Appeal—ability. See C. P. CODE, S. 47 50 L.W. 537 = (1939) 2 M.L.J. 608 (1).

—Ss. 19 and 20—Construction and scope—Decree confirmed on appeal—Application to scale down decree—debt and amend decree—Jurisdiction of trial Court.

—Ss. 19 and 20—Hindu joint family—Successive applications by different individual members—Competency.

Any member of a Hindu joint family may apply for stay and scaling down a debt. But every member of the

A.I.R. 1939 Mad. 500 = (1939) 1 M.L.J. 888.

—Ss. 19 and 20—Jurisdiction—Mortgage decree for sale—Execution—Sale by Berhampore Sub-Court—Application by judgment debtor under Ss. 19 and 20 before confirmation—Subsequent

controlled by S. 10(1).

was made and pending that application, the said decree was confirmed by the Sub-Court.

VARU v. VENKATARAMA NA
1939 M.W.N. 2

—S. 19—Applications
Negotiable Instruments Act, ss. 120 and 121. See
NEGOTIABLE INSTRUMENTS ACT, SS. 120 AND 121
(1939) 2 M.L.J.

—5—1939 in that
n 14—4—1938, on
entries were situated
after Court

4—1—1939, the Berhampore Court passed an order of stay on the application under S. 11—1938, that Court made an order

MADRAS AGRIC RELIEF ACT (1938), S 19

judgment debtors to elect between the two Courts. As this was not done that Court dismissed the applications under S 19 for non prosecution on 13-12-1938. The applications under S 20 were dismissed by the same Court later on 23-1-1939. On 13-12-1938 the Chingleput Court passed an order on the applications under S 19, holding that it had jurisdiction to deal with them.

Held, in revision (1) that as the execution petition was pending on 1-4-1936, in the Berhampore Sub Court, that Court was perfectly competent under the Notification No F 210 of 1936, Judicial, dated 1-4-1936 published by the Governor-General in Council, in pursuance of the powers conferred on him by the Government of India (Constitution of Orissa) Order of 1936 to go on with it, as if the order in council constituting Orissa Province had not been made in other words, that Court had complete jurisdiction and continued to function as a Court in the Madras Presidency and subject to the jurisdiction of the Madras High Court, (2) that there was no doubt that all the applications under S 19 and 20 of the Madras Agriculturists Relief Act must be deemed to be petitions raising questions relating to execution discharge or satisfaction of the decrees falling under S 47, C P Code and were therefore rightly presented to the Berhampore Sub-Court which was the Court executing the decree then, (3) that the precaution taken by the judgment debtors of presenting applications for the same relief to the Chingleput Sub-Court did not justify the Berhampore Court in declining jurisdiction made to it simply because of the fact that the debtors to elect between the two Courts for non prosecution (4) that the Berhampore Court had jurisdiction to deal with the applications to deal with them on their merit.

was bound by the provisions of the Madras Agriculturists Relief Act or any Legislative enactment in force in the Madras Province, (6) that since the Berhampore Court alone had jurisdiction in the matter, it was clear

—S 19—Scope—Application under—Debt evidenced by promissory note of 1933—Plea that note was renewal of note of 1930—If barred—*Etoppel*—*Negotiable Instruments Act* Ss 120 and 121. See *NEGOTIABLE INSTRUMENTS ACT* Ss 120 AND 121. 50 L W 587=(1939) 2 M L J 658

—S 20—Applicability—'Debt'—'Debtor'—Undertaking by Hindu father to make restitution of amount—Charge created by decree on family property in respect of same—Property allotted to son on partition—Right of son to relief under S 20.

A debt in the Madras Agriculturists' Relief Act cannot be restricted to cases where a person is personally liable it is wide enough to cover the case of every person who is in any manner liable either because he is personally liable or because he is liable on account of possession of property and takes in his heirs, legal representatives or assigns. The definition of 'debt' under the Act would include a liability to make restitu-

MADRAS AGRIC RELIEF ACT (1938), S 21

tion. Where there is a liability on the part of a Hindu father to make restitution and pay certain amounts, which is made a charge on his joint family property his son who takes that property as the result of a partition between him and his father would be a debtor, and be entitled to apply under S 20 of the Act. It cannot be said that because the son is not personally liable to pay the amount charged on the property falling to his share he is not a debtor or that there is no debt which would entitle him to apply under the Act. (*Pandurang Rao, J.*) *VASANTHA KAO SAHIB v. NARAYANASWAMI AYYAR*. 50 L W 636=

1939 M W N 1077=(1939) 2 M L J 745.
—S 20—Applicability—Hindu father—Decree against in respect of liability enforceable against family property—Right of son to apply under S 20.

A decree passed against a Hindu father in respect of a family liability that is to say, a liability enforceable against the family property, must be deemed in law to be a decree passed against his son also. The son must be regarded as virtually party to it though not by name as he must be regarded as a person by whom the debt is payable as well as by his father and the son is therefore a debtor who is entitled to maintain an application under S 20 (*Pandurang Rao, J.*) *VASANTHA KAO SAHIB v. NARAYANASWAMI AYYAR*.

50 L W 636=1939 M W N 1077=(1939) 2 M L J 745

—S 20—Construction—Period of 60 days—If period of limitation—Expiry of period on holiday—

Relief by son by application being entertained by the Court.

steps contemplated by period of limitation—the right to apply for filed within 60 days 60 days expires on a reopening day would (*Patanjali Sastri, J.*) *THIRUVENGADATHA*

AYYANGAR I L R (1939) Mad 886=49 L W 762=1939 M W N 521—A I R 1939 Mad 613=(1939) 2 M L J 308

—S 20—Right to apply under—Pledge mortgagee

directed by the decree in that suit to redeem is in no sense of the word a debtor. The decree is not against him for a debt payable by him but in his favour allowing him a right in equity to redeem the first mortgage. He is not therefore entitled to apply under S 20 of the Madras Agriculturists' Relief Act of 1938 (*Narasimham, J.*) *NARAYANA CHARI v. ANNAMALAI CHETTIAR*. 1939 M W N 736(1)=(1939) 2 M L J 225

—S 20—Scope of enquiry under—Order under—Appealability. See C P CODE S 47.

1939 M W N 910=(1939) 2 M L J 495.

—S 21—Construction and scope—Decree against Hindu father in respect of family liability—Execution against property allotted to son on partition—Father declared insolvent and dividend declared—Application by son under S 20—Competency.

The exclusion of an insolvent enacted in S 21 of the Madras Agriculturists' Relief Act must be limited only to the insolvent and the debts payable by him, and even.

MADRAS AGRIC RELIEF ACT (1938), S. 23.

MADRAS CO-OPER SOC ACT (1932), S. 48.

passed has been adjudicated an insolvent and a dividend has been declared cannot deprive the debtor's son of his right to apply under S. 20 of the Act, when such decree

superstructure—Three months' notice before erection—If necessary—Proper notice in such cases

S. 11 of the Madras City Tenants' Protection Act, as a landlord, before seeking to eject a tenant, does not require that he should give three months' notice, does not require that the tenant is not the owner of the superstructure. The section is limited to the case where the tenant is the owner of the superstructure. This is apparent from the language of the section itself as well as the entire scheme of the Act, which is to afford protection to a tenant who has constructed a building on another's land. Where the tenant is not such an owner, the landlord is only bound to give a notice of 15 days on the footing of a monthly tenancy as required by the Transfer of Property Act, which would then apply (*Leach, C. J. and Krishnaswami Ayyangar, J.*) *VEDAVALLI THAYAKAMMAL v. JINUS CHITTIR*

ILLR (1939) Mad 909—1939 MWN 617—49 LW 781—*AIR* 1939 Mad 744—(1939) 2 MLJ 112.

—S. 23—Order under—Appeal—C. P. Code, S. 47.

An order under S. 23 of Madras Act IV of 1938 is not appealable, as the question involved is not one relating to execution, discharge or satisfaction of the decree within the meaning of S. 47, C. P. Code. (*Burn and Stodart, J.J.*) *VISWANATHA AYYAR v. NARAYA NASWAMI AYYAR*.

50 LW 201—

1939 M.W. N. 735 (2)—*AIR* 1939 Mad 796—(1939) 2 MLJ 398

MADRAS BOARD OF REVENUE REGULATION (I OF 1803) S. 5—Powers of Board of Revenue—Interference—HEREDITARY

MADRAS CITY CIVIL COURT ACT (VII OF 1892) Ss. 3 and 5—Scope—Jurisdiction—aside order allowing claims to superstructure—Cognizability by City Civil Court. See SMALL CAUSE COURTS ACT, S. 23.

(1939) 1 MLJ 776

—Ss. 3 and 5—Scope—Suit pending in Court of Small Cause—Transfer to City Civil Court for trial along with suit pending therein—Application to High Court for—Maintainability—C. P. Code, s. 24. See C. P. CODE, S. 24. 50 LW 634

ings on either side actually in existence before a street comes into existence so far as the provisions of the City Municipal Act are concerned. Where an owner of land parcels it out into several plots for building purposes and

and be made in such a matter to the notice of a riot of the village and has no resident

local agent other than his tenants who were the persons paying kist to government, it is sufficient if the requisitions are served on such tenants when there has also been wide publication of the requisitions. (*Madgworth, J.*) *RAGHUNATHA THATHACHARIAR v. SECRETARY OF STATE FOR INDIA*, 1939 M.W.N. 777—50 LW 297—*AIR* 1939 Mad 790—(1939) 2 MLJ 565.

CO-OPERATIVE SOCIETIES ACT

under R. 22—Liquidator appointed—Sale by execution of decree—Settling aside—Remedy—

Suit in Civil Court—Bar of.

A suit in a Civil Court to set aside a sale held by the liquidator of a Co-operative Society, appointed by the Registrar, in execution of a decree against a member of the Society is barred by the rules under the Act which prescribe a person, whose property is sold by the liquidator, to apply to set aside by an application within 30 days of the sale. A person who cannot maintain a suit for the remedy under the Act (*J.*) *SUBBAYYA v. THIIPPA*

MWN 907—50 LW 364—*AIR* 1939 Mad 967—(1939) 2 MLJ 604.

—S. 48—Applicability—Suit against liquidator of Co-operative Society—Leave of Registrar not obtained—Maintainability of suit.

A suit filed against the liquidator of a Co-operative Society as representing the Society is not maintainable in the Civil Court without the leave of the Registrar required by S. 48 of the Co-operative Societies

poundable.

The offence under Ss. 37 (2) and 45 is an offence against public morals wherein the society and the State are interested and there can be no doubt that such an offence is non-compoundable. According to English law an indictment for keeping a gaming house is an indictment for a public nuisance and not for a private injury. Such an offence is one involving moral turpitude.

MADRAS RULES OF PRACTICE R. 235.

(Wardworth, J.) SUBBAYYA v. THIPPA REDDI.

1939 M.W.N. 907=50 L.W. 364=

AIR 1939 Mad. 967=(1939) 2 M.L.J. 604

MADRAS CRIMINAL RULES OF PRACTICE, R. 235—*Appeal—Presentation to second clerk during absence of head clerk—If proper.*

An appeal presented to the 2nd clerk in the proper Court during the absence of the head clerk is a valid presentation.

v. EMPEROR.

40 Cr. L.J. 960=1

—R. 260—*Case*—*Property of.*

In the case of an accused convicted of murder which is one which the Judge thinks should be dealt with under R. 260 of the Criminal Rules of Practice of sentence a sentence of death is quite (Burn and Stodart, J.J.) LATCHMAI PEROR 1939 M.W.N. 1130=

MADRAS DEBT CONCILIATION A

1936), Ss 4 and 17—*Scope—Jurisdiction**Conciliation Board—Debtor owing to creditor—Application under S 4 for scaling down on the ground of applicant being agriculturist under Madras Agriculturists' Relief Act—Creditor objecting—Order for scaling down—Jurisdiction of Board—*

conciliation Act, if all the debts due by the applicant are due to one creditor who does not agree to a settlement of his debts, the only course for the Board to follow is to dismiss the application. The Board cannot order the debts to be scaled down, because of the provisions of

RAMASWAMI CHETTI v. RAMACHANDRA KAO

1939 M.W.N. 1196=50 L.W. 813=

(1939) 2 M.L.J. 789

—S 2

*Applications of applicants to Concilia**Board*

A judgment

under S 22

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MAD. DIST. MUN. ACT (1920), S 249.

tracts. (Pantrang Row and Abdur Rahman, J.J.)

MADURA MUNICIPALITY v. ALAGIRISAMI NAIDU.

I.L.R. (1939) Mad. 923=50 L.W. 440=

1939 M.W.N. 821=A.I.R. 1939 Mad. 957.

—S 68 (2)—*Construction—Contract of value exceeding Rs. 1,000—Sanction of Municipal Council—Necessity for before contract is entered into—Terms and conditions—If to be brought to notice of*

the District Municipalities Act, in sanction of the Council for the before the same is made implies it be made aware not only of the matter in regard to which the contract would be entered into but also in regard to its terms and conditions. The sanction has to precede and not to follow the making of

—S 86—*Property tax—Liability for—Person owning melwaram alone in land—Extent of liability of.* Under S. 86 of the Madras District Municipalities Act as amended in 1920, the person liable to pay the pro

portions and in order to be an

same category of a person

ve rents and profits of the

no provision in the Act by

led to receive the rents and

the property is limited to

the melwaram right can be assessed in respect of

the kudivaram and have a right to recoup himself.

S. 86 does not entitle a Municipality to demand

from the melwaram anything more than a tax upon

the interest in the premises of which he is the owner.

(Varadachariar and Gentile, J.J.) CHAIRMAN, MUNICI

PAL COUNCIL, ANAKAPALLI v. NARAYANA

GAJAPATHIRAJU BAHADUR GARU

1939 M.W.N. 819=50 L.W. 360=

AIR 1939 Mad. 946=(1939) 2 M.L.J. 304.

—Ss 174 (A) and 313 (1)—*Applicability—Lorry**registered for private trade—User for transporting**goods into Municipality—Offence—Liability of owner to**conviction*

Under S 174 (A) read with S 313 (1) of the Madras

District Municipalities Act, it is the user of the motor

vehicle which is liable to conviction.

The terms of S. 249 of the Madras District Munic

ipalities Act, it is the user of the motor

vehicle which is liable to conviction.

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ipalities Act, it is the user of the motor

vehicle which is liable to conviction.

MAD. DIST MUN ACT (1920), S 347.

tion under S 249, the accused is not entitled to acquittal because it is not shown that the cattle were kept for an industrial purpose. It cannot be said that a license is un-

PROSECUTOR

Mr L J 762 =

WN 125 =

49 L W 150 = A I R 1939 Mad 914.

—S 317, *Proviso*—*Prosecution for affixing advertisements without licence*—*Limitation*—*Continuing offence*.

For a prosecution under the District Municipalities Act for affixing cinema advertisements on vehicles and road sides vested in a Municipal Council without licence, no period of limitation is specified, under the proviso to S 347 of the Act, the offence has to be treated as a continuing offence, and a complaint may therefore be made within 12 months from the commencement of the offence (*Lakshmana Rao, J*) COMMISSIONER, MUNICIPAL COUNCIL, VELLORE v DAMODARA MUDALIAR, 1939 M W N 837 = 50 L W 521 = (1939) 2 M L J 815

MADRAS DISTRICT POLICE ACT (XXIV OF 1859), S 45—Scope—Collection of money for feeding poor during Mohuram festival—Offence—Fee or gratuity.

The language of S 45 of the District Police Act is comprehensive. Where a person collects money for feeding the poor during the Mohuram festival, the amount so collected may be a fee or gratuity, and the person is (*Lakshma*

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MADRAS
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ation Act, as if

landholder or be entitled to recover the tax or any portion of it from the tenant or occupier, as there was no provision for the same under

sions of the Local Boards Act in any manner connected therewith. The education tax levied under the Act is added to the land cess levied under the Local Boards Act and both are collected as one unit. Where education tax is levied from the landholder of a holding he is entitled to reimburse himself to the extent of half of it by collecting it from his occupancy tenant. (*Stodart, J.*) NAGAYYA v. VENKATA MAHIPATHI GANGA DHARA RAMA RAO 1939 M W N 400 = 49 L W 629 = A I R 1939 Mad 529 =

MADRAS ESTATES
Ss. 3 (5) 6 and 9—*Application of—Under tenure to make small payment to grantee—If "land owner" ryots.*

Y. D. 1939—31

MADRAS ESTATES LAND ACT (1908), S 3.

Where a zamindar of an estate makes a post settlement grant of a part of a village with both *namams* as *manjam*, as a permanent under-tenure on a small annual payment, the interest granted must be held to clothe the grantee with the character of land owner and to put the cultivating tenants under the grantee in the position of ryots to whom Ss. 6 and 9 of the Madras Estates Land Act apply (*Sir George Rankin*) NARAYANARAJU v. SURYANARAYUDU, 181 I C 1 = 6 B E 36 = 1939 O L R 577 = 1939 M W N 1188 = 50 L W 349 = A I R 1939 P C 241 = (1939) 2 M L J 901 (P C)

—Ss 3 (7) (ii) and 6—*Scope and effect of—"Old waste"*—"Ryots land"—*Acquisition of occupancy rights*—*Test*

A proviso excluding the operation of S 6 of the Estates Land Act cannot be read into the terms of S 3 (7) (ii). Sub-cl (i) of the definition in S 3 (7) has no application except to lands which have been for ten years uncultivated and in the possession of the landholder at some time during a period not exceeding twenty years before the passing of the Act. That has no application to cases where the lands have been under continuous cultivation by tenants for many years past. The second part of sub-cl (ii) is also inapplicable for it deals with cases in which the landlord has, before the passing of the Act, got an eviction decree in respect of that land. S 6 (1) cannot be ignored. The only way in which "old waste" can be established is either by prov-

Court before the passing of the Act. If none of these conditions exist, then S 6 (1) comes into effect on 1st July, 1908 when the land was in the possession of a ryot as defined by sub-cl (15) it being ryoti land within the definition of sub-cl. (16). When occupancy rights have thus been acquired by a tenant on 1st July, 1908,

JAGAPATHI RAJU.

1939 M W N 903 =
A I R 1939 Mad 971.

—S 3 (11)—"Rent"—*Irregular cultivation by ryot with water from Government source—Water-cess payable by ryot wrongly collected from landholder—Suit by latter for recovery from tenant—If suit for rent—Jurisdiction of Revenue Court—Contract Act, Ss 69 and 70.*

A claim by a landholder to recover from his ryot a sum of money paid to the Government on account of

directly recoverable from the ryot but was wrongly

MADRAS ESTATES LAND ACT (1908), S. 5

collected from the landlord cannot change the character of the payment from rent to a mere compensation payable under Ss 69 and 70 of the Contract Act (*Madrasworth, J*) **PONNAMMAL NADATHI v NELLIAPPAR AND SRI KANIHIMATHI AMBAL DEVASIHANAM**, 50 L W 463=1939 M W N 836= A I R. 1939 Mad. 918=(1939) 2 M L J 41

—Ss 5 and 125—Scope and effect—Sale by Collector for arrears of rent pending suit on mortgage holding—If affected by his pendens—Transfer of Property Act, S 52

A sale of a holding by a Collector for arrears of rent due to the landholder after the passing of a mortgage decree and before the final decree on a mortgage of the holding is not pendens under S 52 T P Act in view of 125 of the Madras Estates Land Act. Collector for arrears of rent of the land on which those arrears are due to the landholder is not affected by a pendency of a mortgage executed by the ryot who is in default (*Madrasworth, J*) **PONNAMMAL CHETTIAR v OBUL REDDY**, 181 I C 57=11 E M 767=1939 M W N 69=48 L W 927= A I R 1939 Mad 256=(1939) 1 M L J 152

—S 20-A—Application under S. 20-A—Res judicata—Applicability.

Applications of the kind contemplated by S 20 A of the Madras Estates Land Act cannot be regarded as matters in respect of which the doctrine of *res judicata* will apply in its well understood sense. The section contemplates that the power thereby conferred on the District Collector may be exercised from time to time according to the exigencies and changing requirements (*Paradachariar, J*) **VARADUNARAMA PANDIA CHINNATHAMBALAR v RANGASWAMI NAIDU**, 50 L W 162=1939 M W N 726= A I R 1939 Mad 901=(1939) 2 M L J 292

—S 20 A—Collector—Order under—Remission by S. 115

The Collector acting under the Madras Estates Land Act cannot be bound by the High Court has no

A I R. 1939 Mad 901=(1939) 2 M L J 292

—S 20 A—Orders on applications under—Res

MADRAS ESTATES LAND ACT (1908) S 77.

LAMPUDI v. SURYAPRAKASARAO GARU
1939 M W N 784=50 L W. 277=
A I R. 1939 Mad 929.

—S 26 (1)—“Consideration”—Meaning of
The word “consideration” in S 26 of the Estates Land

—S 26 (3)—Applicability—Compromise decree
fixing rate of rent—Binding character of.

S 26 (3) of the Madras Estates Land Act is intended to give effect to the remissions given by a landholder in the value of the estate which he has no application to the Court in a suit under S. 11 of the Act. Such a fixation of rent is not the voluntary act of the landholder, it becomes the act of the Court. (*Madrasworth, J*) **SESHAYYA RAO v ARUNDHATAMMA**, I L R (1939) Mad 311=183 I C 511=12 E M 301=48 L W 919=1938 M W N 1279= A I R 1939 Mad 184=(1939) 1 M L J 70

—S 26 (3)—Applicability—If confined to original grants.

S 26 (3) of the Madras Estates Land Act is not confined to original grants of land, but applies also to a grant at a reduced rate of land already in the possession of a ryot (*Madrasworth, J*) **SESHAYYA RAO v ARUNDHATAMMA**, I L R (1939) Mad 311=183 I C 511=48 L W. 919=1938 M W N. 1279=12 E M. 301=A I R 1939 Mad 184=(1939) 1 M L J 70.

—(as amended in 1931), S 40 (1)—Construction—Not paying cash rent for many years varying with the nature of crops raised—Right to apply for commuta-

meaning sometimes in cash and sometimes in kind, to be paid into the section words which would alter the position of the tenant who has for many years paid rent in cash though the amount paid by him has varied according to the nature of the crops raised, is entitled to apply under S 40 (1) (*Lea C J* and

SURYAPRAKASARAO GARU, 1939 M W N 784=

is a duty to be performed by the landlord or the tenant, high such 1 in J.)

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MADRAS ESTATES LAND ACT (1908), S. 107.

Where a landlord possessed of Kambattam or home farm lands sells all his kudivaram right therein reserving only the melvaram right therein, for a substantial cash payment and future payments of rent at specified rates, the lands cease to be the private or home farm

NAGANNA. 50 L.W. 602=1939 M.W.N. 1090= (1939) 2 M.L.J. 778

—S 107—Scope—Sale for arrears of holding—Sale held by Revenue Inspector—Purchase by Village Munsif—If void.

Where at a sale of a holding held by the Revenue Inspector for arrears of rent, the holding is purchased by the Village Munsif, who is a person subordinate to the officer conducting the sale, the sale is void as being prohibited by S 107 of the Madras Estates Land Act.

server—Necessity to prove—C. P. Code, O 5, r 17.

It is true that the words "due and reasonable diligence" do not appear in S. 112 of the Madras Estates Land Act, which provides for affixture if personal service cannot be effected. But there must be reasonable diligence on the part of the process server before the Court can conclude that service could not be personally made and before the Court will be satisfied that the circumstances justify service by affixture. The require-

A.I.R. 1939 Mad 502=(1939) 1 M.L.J. 618

—S 112—Scope—Absence of proper notice—Effect on sale—Tenant aware of sale when held—If validates sale held without proper notice

The fact that a ryot was aware of the sale at the time when it actually took place would not be sufficient to

—S 117—Scope—Mandatory nature—Sale in contravention of provisions—Legality.

Under S. 117 of the Madras Estates Land Act, it is the selling officer who has to fix the date of sale, to

held in such great disregard of the statutory requirements cannot be regarded as a sale. (Leach, C. J. and Krishna J.) MANICKAVASAKA THEVAR v PILLAI 50 L.W. 886=(1939) 2 M.L.J. 778

—Ss 146 and 147—Scope—Transferee prior to Act paying rent to landlord without default and recognized by landlord—Suit after Act against pattadar alone without impleading transferee—Sale in execution—If binds transferee.

MADRAS ESTATES LAND ACT (1908), S. 172.

Ss 146 and 147 of the Madras Estates Land Act of 1908 cannot have retrospective application to the case of a transfer effected before the Act, so as to take away the vested right of a transferee who had a recognized status as a transferee even without any notice being given

the rights of such a transferee to land by title to land by notice by the landlord and has in any way or affected

by a sale in execution of a rent decree against the original pattadar to which he has not been a party and of which he has had no notice (Leach, C. J., Krishna-swami Ayyangar and Somasaya, JJ) ANKANMA v. VENKATA SUBBAYYA. I.L.R. (1939) Mad 794= 182 I.C. 833=12 R.M. 145=49 L.W. 777= 1939 M.W.N. 599=A.I.R. 1939 Mad 517= (1939) 2 M.L.J. 1 (F.B.).

—S. 151—Construction of small house and cattle shed in small portion of holding—If entails liability to

reversion of land from agriculture is not a diversion, provided that that diversion does not impair the value of the land for future

agric building occupying something less than one-twentieth of a whole agricultural holding render that holding, taken as a whole, unfit for agricultural purposes (Wadsworth, J) ZAMINDAR OF SEITUR v HORAI VENKATA RAJU. 1939 M.W.N. 294=49 L.W. 442= A.I.R. 1939 Mad. 497=(1939) 1 M.L.J. 433

—S. 172—Construction—Revenue Board—Jurisdiction of settlement

should not be the Board of Revenue only after the republication of the Settlement Record after confirmation by the Collector under S. 170 (3) of the Act. All that S. 172 does is to fix the outer limit of time within which the powers of revision may be exercised. This does not necessarily imply that the Board has no power of interference before the republication. There is no warrant either in the language of the section or in the reason of the thing to justify the view that the Board has no jurisdiction to exercise its revisional powers till after the settlement record has been re-published after confirmation by the Collector (Varadachariar and Pandrang Row, JJ) SUBRAMANIA IYER v VENKATARAMA IYER. I.L.R. (1939) Mad. 51=49 L.W. 416= 1939 M.W.N. 430=A.I.R. 1939 Mad 599= (1939) 1 M.L.J. 536.

—S. 72—Powers of Board of Revenue—Provision in respect of village in which rent in kind has been levied—Power to fix money rent in settlement

nothing in the scheme of Ch. XI of the Madras Estates Land Act to restrict the authorities

settlement proceedings. It cannot therefore be held that in proceedings under Ch. XI, the Board has no power to fix a money rent in respect of a village where only rent in kind had hitherto been in vogue (Var

MADRAS ESTATES LAND ACT (1908), S 172

chariar and Pandrang Rou, JJ) SUBRANANIA
IYER v VENKATARAMA IYER

I L R (1939) Mad 51=49 L W 416=

1939 M W N 430=A I R 1939 Mad 599=

(1939) 1 M L J 536

—S 172—*Procedure—Settlement of rent—Fixing of—Money rent instead of rent in kind in revision at conversion rate based on average price of last ten years—Legality of—Jurisdiction of Board—Proper procedure for fixing of rent in cash—Ch XI—If confined to fixing of rent on cash basis only*

re
of
however a procedure which goes further than merely

which is really more than a mere ministerial or arithmetical step which if it had been directed to be done by the Revenue Officer would involve a consideration of a number of matters which are not and cannot be before the Board at the time when it passes the order, it must be held that so much of the Board's order as goes beyond what is contemplated by S 172 is done without jurisdiction. Where at an early stage in the proceedings before the Revenue Divisional Officer the landlord opposed the proposal to fix the rent in cash and from that stage till the matter came up before the Board of Revenue, no reference whatever was made to the question of cash rent—the whole procedure adopted by the Revenue Officer and the confirming authority having

before the Board when it gave the parties an opportunity to show cause why cash rents should not be fixed, and the Board passed an order fixing rents in money on the basis of a conversion rate calculated on the average price

A I R 1939 Mad 599=(1939) 1 M L J 536

—S 185—*Private land—Question as to—Burden of proof*

S 185 of the Madras Estates Land Act provides that when in any suit it becomes necessary to determine whether any land is the landlord's private land the land
the contrary is
have been
private land
to show that

MADRAS GAMING ACT (1930), S 6

it is not private land (*Mockett, J*) VARISAI
MUHAMMAD ROWTHER v MARUNGAPURI ESTATE
1939 M W N 395=A I R 1939 Mad 614=

(1939) 1 M L J 334

—S 189—*Jurisdiction of Civil Court—Inam within zamindari—Tenant of inamdar using zamindar's water and raising second crop—Suit by zamindar for water cess against inamdar and tenants—Cognizability in Civil Court* See WATER CESS—LIABILITY FOR

49 L W 765

—S 192—*Construction—Sale in execution of rent gularity—Application to set aside*
Code, O 21, R 90—*Applica-*

S 192 of the Madras Estates Land Act cannot be

A I R 1939 Mad 603=(1939) 2 M L J 120

MADRAS FOREST ACT (V OF 1882) S 26 and
E 13 (III)—*Scope—Carrying sand and stone from public cart track—Offence—Bona fide agricultural purpose*

R 13 (iii) of the rules framed under S 26 of the Forest Act does not prohibit quarrying for bona fide agricultural purposes at all, nor does the rule prohibit quarrying for than agricultural purposes or domestic use by the general public. It only makes such quarrying subject to payment of a fee. Where a person removes sand and stone from a public cart track, and used the same for enclosing his agricultural land by ridges

Held that this must be regarded as a bona fide

12 R M 312=1939 M W N 313=49 L W 478=

A I R 1939 Mad 561=(1939) 1 M L J 579

MADRAS GAMING ACT (III OF 1930) Ss 3
and 4 (2)—*Scope—Payment of money or sharing of*

Offence

pursuance

defined by

can be no

money or

KANNIAH

N 1003=

Mad 976=

(1939) 2 M L J 618

—S 4 (2)—*Abetment of offence under—Conviction—Conditions of*

If no particular person is found to have committed an offence under S 4 (2) of the Gaming Act there can be no conviction under S 109 I P Code, read with S 4 (2) of the Gaming Act (*Patanjali Sastri, J*) KANNIAH
MAISTRY v EMPEROR 1939 M W N 1003=

60 L W 769=A I R 1939 Mad 976=

(1939) 2 M L J 618

—S 6—*Scope—Presumption under—If arises on mere finding of gaming instruments*

S 6 of the Gaming Act does not say that the mere finding of gaming instruments is evidence of gaming. There is a wide difference between a person being present at a particular place for the purpose of gaming and his gaming at the place. It is only the latter act that is an offence under S 4 (1) and not the former. S 6 cannot therefore be invoked to sustain a conviction

MAD H R E ACT (1927), S. 65-A

amendment the Board had no power either to appoint additional or associate trustees, or to appoint a manager not responsible to nor removable by the trustee (*Pandurangh Row and Abdur Rahman, f.f.*) **BOARD OF COMMISSIONERS FOR HINDU RELIGIOUS ENDOWMENTS, MADRAS: TRUSTEE OF VIRUPAKSHASWAMI**

1939 M W N 775-A I R 1939 Mad 801 = (1939) 2 M L J 395

—(as amended in 1935), S 65 A—*Applicability—Procedure under—When to be resorted to—Facts adjudicated upon by Civil Court—If can be relied on as reasons for action*

The procedure under S 65-A of the Madras Hindu Religious Endowments Act, as amended in 1935 cannot be resorted to unless there is gross mismanagement justifying restriction of the power of the trustee. Nor can the Board give as reasons therefor the very reasons which have all been considered and adjudicated upon and found against by the Civil Court in a suit to which the Board was a party. There is nothing in the Amending Act which exempts the Board from the fundamental rule of law that a party to a suit is bound by the decision in that suit unless it is set aside by an appeal review or a fresh suit (*Somayya f*) **ZAMORIN OF CALICUT v MADRAS HINDU RELIGIOUS ENDOWMENTS BOARD** 1939 M W N 1098

—S 65 A—*Notification of temple—When to be resorted to*

The procedure in regard to notification under the Madras Hindu Religious Endowments Act ought not to be lightly resorted to, unless and until there is such serious mismanagement of a temple as would justify an

—(as amended by Act XII of 1935), S 65 A—*Scope—Powers of Board—Scheme settled by Civil Court in suit—Board party to suit and raising contentions and suggestions—Power to Board to ignore scheme and issue notification under S 65 A*

When a decree has been passed by the Civil Court framing a particular scheme for the management of a temple in a suit to which the Hindu Religious Endow-

MADRAS LOCAL BOARDS ACT (1920)

trustee is entitled to meet those reasons. It is not enough for the Board to merely say that the scheme framed by a Civil Court—when the same has been framed in a suit to which the Board itself was a party—is found wanting. The reasons must be such as would be capable of being met. They must be sufficiently specific to give a reasonable opportunity to the other party to show cause against those reasons (*Somayya, f*) **ZAMORIN OF CALICUT v MADRAS HINDU RELIGIOUS ENDOWMENTS BOARD** 1939 M W N 1098

—S 76—*Scope—If subject to S 34, or an exception to S 34* See **MADRAS HINDU RELIGIOUS ENDOWMENTS ACT, SS 34 AND 76**

1939 M W N 1042
—S 79—*Scope—Decree made prior to Act declaring archakas right to control paricharaka—If saved and if prevails over S 43* See **MADRAS HINDU RELIGIOUS ENDOWMENTS ACT, SS 43 AND 79**

(1939) 2 M L J 661
MADRAS IMPARTIBLE ESTATES ACT (II OF 1904 as amended in 1934) S 12—Scope—Right of illegitimate sons of junior members to maintenance out of estate—If affected

The Madras Impartible Estates Act leaves untouched any rights which illegitimate sons of a junior member of an impartible estate may have under the Hindu Law to maintenance out of the estate and income thereof (*Letch C f* and *Krishnaswami Ayyangar f*) **MAHARAJAH OF VENKATACINI v RAJA RAJESWARA RAO** I L R (1939) Mad 622-49 L W 717 = 1939 M W N 522-A I R 1939 Mad 614 = (1939) 1 M L J 831

MADRAS IRRIGATION CESS ACT (VII OF 1865), S 1 second proviso—Construction and scope—Ryotwari single crop wet land—Use of water for second crop from same source—Liability to penalty—If incurred.

The Revenue authorities have no power to impose a penalty under the Irrigation Cess Act when water is taken without permission during the second crop season for the purpose of irrigating land classed as "single crop wet", and the source from which water is taken is the source authorised for the irrigation of one crop. To justify the imposition of a penalty in respect of land held under ryotwari settlement and classed as second crop wet, there must be unauthorized use of water from a source other than the authorized source for taking of extra water from the authorized

—S 65 A (1) (a)—*Notice under—Contents—Reasons—Specification of particulars—Necessity*
Under S 65 A (1) (a) of the Madras Hindu Religious Endowments Act, the Board has to give reasons and the

convenient to try the two matters together and the petition should therefore be tried as a petition in each case, and the petitioner can be required to make provision for two sets of costs. There is no warrant in the

express provision in the Act for the Madras Local Board to consider a candidate or two candidates in respect of the other reserved, in single petition but if the petition filed should be considered.

MADRAS LOCAL BOARDS ACT (1920), S. 55.

rules for calling upon the petitioner to choose whether he would drop his charges against one of the two successful candidates and proceed only as against the other. (*Leach C J and Krishnaswami Ayyangar, J.*)
SEENI MADAR SAHIB v. ABDUR RAHMAN SAHIB.

50 L.W. 237 = 1939 M.W.N. 817 =

A.I.R. 1939 Mad. 792 = (1939) 2 M.L.J. 435

—S 55 (2) (e)—Applicability—"Subsisting contract"—Meaning of.

It is only the existence of a subsisting contract at the time of the nomination that disqualifies the candidate

(1939) 1 M.L.J. 450

—(as amended in 1930), Ss 78 and 79—Liability to land cess—Quarries grazing and grass growing land—Basis of assessment—"Rent"—"Occupation"—Meaning of.

Whether land used for quarrying or for grazing or for cutting grass is occupied by tenants or not it is clear that the rental value of such land is liable to be taxed under Ss. 78 and 79 of the Madras Local Boards

the last part of cl 3 of S 79. If, owing to the unclassified or exclusive nature of the user granted in any case, it were held that there is no occupation by the tenant, then there would clearly be occupation by the landholder himself and the second part of Cl. 3 of S 79 would come into play. Whether the user is of such a character as to be reasonably described as occupation must be largely be a question of fact. (*Wainwright, J.*)
SECRETARY OF STATE v. VENKATA RAMAYYA v. RAO.

A.I.R. 1939 Mad 651 = (1939) 1 M.L.J. 780

—(as amended in 1930), S 79 (3)—Applies a liability—Income from fisheries—If rent or income from land—Liability to cess—Tank—If land

The rental value which is the basis of assessment under S 79 of the Madras Local Boards Act is not confined to agricultural land, but includes royalties for minerals and in fact rent in its widest form. A tank as known in South India is essentially land though to some extent covered with water for a considerable portion of the year. If it is in the occupation of a zamindar yielding him income in the nature of rent for the use thereof, then his occupation is taxable. If he leases the right of occupation to a tenant, so that the latter may enjoy the land and the water thereon by catching fish, then the payment made by the tenant is rent. The income derived by the landholder or zamindar in the first case, and the rental value of the tank in the second case would form the basis of land cess. (*Wainwright, J.*)
SECRETARY OF STATE v. VENKATA RAMAYYA APPA RAO 1939 M.W.N. 631 = 49 L.W. 710 =

A.I.R. 1939 Mad 651 = (1939) 1 M.L.J. 780

—S 83—"Landholder"—"Tenant"—Land granted in inam—Grantee given right to collect land revenue from person in possession—Payment of land cess by inamdar—Right to recover from occupier—Limitation for suit—Limitation Act, Art. 120.

MADRAS LOCAL BOARDS ACT (1920), S. 225.

Where certain lands are granted in inam giving the right to the grantee to collect the land revenue from the persons in possession of the land, the landholder for purposes of S. 88 of the Local Boards Act must be taken to be the inamdar, while the persons in possession must be taken to be the tenants, though the occupiers also come within the definition of landholder in S. 3 (9) of the Act. If the inamdar pays the land cess to the Local Board, he can recover only half the amount from the occupier or tenant under the second proviso to S. 88 and his claim is subject to the six years rule in Art 120 of the Limitation Act.

(*ali Saitri, J.*) MAHOMED

v. DROS, KUNHIKOVA

466 = 1939 M.W.N. 1185 =

877 = (1939) 2 M.L.J. 579.

ended by Act XI of 1930, S. 102 A (1)

and scope—Levy of tax—Absence of der S 75—Legality.

S. 102 A (1) of the Madras Local Boards Act is not a taxing section but a remitting section. Taxing statutes must be construed strictly, and S. 102 A (1) can only be read as meaning that, if the tax is otherwise leviable, the owner of a house included within a village panchayat, is entitled to remission under the section. The section cannot be read as implying that tax is leviable. It is clear that the tax is not leviable in the absence of a valid notification under S. 75 of the Act either by the District Board or by the Local Board. A levy of tax without a notification

in an area in question is illegal (*and Krishnaswami Ayyangar, J.*)

THIRUVOTHIVUR v. WFS

I.L.R. (1939) Mad 566

= 182 I.C. 471 = 12 R.M. 82 = 1939 M.W.N. 370 =

49 L.W. 503 = A.I.R. 1939 Mad 421 =

(1939) 1 M.L.J. 588 (F.B.)

—S 223—Scope—Charge sheet filed by police under S. 379 / P. Code—Acts constituting offence under Local Boards Act—Magistrate treating charge sheet as complete—Limitation for suit—Limitation Act, Art. 120.

I.P.

v. P.

v. P.

v. P.

v. P.

v. P.

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MADRAS LOCAL BOARDS ACT (1920), S 227.

S 227—Scope—Panchayat Board meeting—Member snatching away minutes book from presiding

ding at the meeting apparently with a view to prevent him from making an entry therein which was objected to is one which a Magistrate is not entitled to take cognizance of in the absence of sanction of the prosecution by the Government. Though the act of snatching away of the minutes book is not a part of the official duties of a member of the Panchayat Board, it is an act done when purporting to act in his official capacity as a member. The question is not whether the particular act alleged is within the jurisdiction or competence of the Court, but whether the act is done while the member purported to act in discharge of his duties and reasonably related to the official who does it (*Pandrang Rao*

THEVAN v KRISHNA PILLAI 181 I C 234 =
11 R M 785 = 40 Cr L J 531 = 49 L W 204 =
1939 M W N. 240 = A I R 1939 Mad 42
(1939) 1 M L J 21

S 227 A—Scope—Vice President acting President of Panchayat Board—Refusal to hand charge to elected president on the ground that meeting held for election was not valid—Conviction—Absence of sanction of Local Government—Effect

The petitioner was the Vice President of a Panchayat Board and was acting as President owing to a vacancy in the office of President. The complainant was elected President at a meeting of the Board but the petitioner disputed the validity of that meeting and declined to hand over charge of the office to the complainant.

THEVAN v KRISHNA PILLAI

virtuted the trial and conviction (*Lakshman Rao, J*)
SUBBAYYA v

12 R M 369 (

part of an individual of intention not to be governed

public policy affecting

within tarwad—Tar
Tavazhis within—If

MAD PREV. OF ADULT. ACT (1918), S 5

There is no warrant for construing the word 'tarwad' in S. 43 (4) of the Marumakkathayam Act as meaning 'so every branch tarwad actually more. Therefore

even though a tarwad is held to be impartible under S. 43, any thavazhi within that tarwad can have its separate properties partitioned between members of that thavazhi or between its sub thavazhis (*Pandrang Rao and Abdur Rahman, JJ*) KUNHILAKSHMI AMMAL v KRISHNA MENON.

1939 M W N. 809 = 50 L W. 164 =
A I R 1939 Mad 799 = (1939) 2 M L J 287.
MADRAS MOTOR VEHICLES RULES (1938),
Rr 175 and 176—Scope—Motor bus—Over loading of
—Liability of driver

Vehicles Rules motor bus. responding to bus driver cannot therefore be held liable under the new rules for

MADRAS NAMBUDEI ACT (XXI OF 1933),

S 23—Scope and effect of—Suit for partition by member of Nambudri ilom—Secerance of status—If effected—Right of member to dispose of interest by will or otherwise

S 23 of the Madras Nambudri Act gives an unqua-

try con- until the tuted by a member of an ilom there cannot be a vested right in the member which can be transmitted by him either by

by filing a suit for partition, there is a division of status, and, so to speak, a division of title and a proprietary

S 10—Village headman—Object of appeal—Competency See GOVERNMENT OF INDIA ACT (1935) S 224 (2). 50 L W 799.

MADRAS PREVENTION OF ADULTERATION ACT (1918), S. 5.

tion under the section. It cannot be said that ghee is sold to the customers, because the price of the ghee is necessarily included in the price of the meal. (*Lakshmana Rao, J.*) PUBLIC PROSECUTOR v. NARAYANA AYYAR. 50 L W 790 = 1939 M W N 1123 (1).

—S 5 (1) (d)—*Offence—be below standard of purity as to its being buffalo's milk on ground that it was sold as buffalo's milk—Sustainability*

The accused was convicted of an offence under S (1) (d) of the Madras Prevention of Adulteration on a charge of having sold milk below the standard of

MADRAS SUPPRESSION OF IMMORAL TRAFFIC ACT (1930), S. 5.

not therefore be sustained. (*Lakshmana Rao, J.*) DELHI BATHER v. CORPORATION OF MADRAS. 1939 M W N 1224 (2).

MADRAS PROHIBITION ACT (X OF 1937), S 4 (1) (a) and (g)—*Separate sentences—Legality.*

Separate sentences are not called for in the case of a offences under sub cls. (a) and (g) Madras Prohibition Act. (*Laksh-*

under in case of regrouping of existing village—Orders of proprietor and of Revenue Divisional Officer.

185 L C 3 = 1939 M W N 244 = 49 L W 400 = A I R 1939 Mad 384 = (1939) 1 M L J 266

—S 5 (1) (d)—*Scope—Sale of sweetmeats "kajoor"—No standard of purity or composition prescribed by Government—Conviction for offence—Sustainability*

Where an article of food is not one of the articles in respect of which the Government have prescribed standards of purity or determined the normal constituents thereof, there is no room afforded for raising a presumption that the article of food is not genuine or is injurious. It is not therefore right to convict a man for a breach of the Adulteration Law when there is no law or

and the appointment is therefore invalid. (*Wadsworth, J.*) MOHONA PONDIA v. RAGHUNADHA DAS. 50 L W 291 = 1939 M W N 239 =

A I R 1939 Mad 888 = (1939) 2 M L J 312. MADRAS PROPRIETARY VILLAGE SERVICE ACT (II OF 1894), S 16—*Dismissal of village officer convicted of offence mentioned in S. 10 (1) (c) by Sub-Collector—No notice given—Dismissal confirmed by District Collector and Board of Revenue—Suit to declare order of dismissal illegal and void—Jurisdiction of Civil Court.*

Under S. 16 of Madras Act II of 1894, in the case of within S 10 (1) (c) of the Act, it is voided that any inquiry should be should be given notice. Where an a village karnam, who has been

dismissal of the kind mentioned in S 10 (1) (c), passed by a Sub Collector, has been confirmed by the District Collector and by the Board of Revenue,

tion of Adulteration Act so long as the Government have not laid down any standard in respect of the same (*Fandrang Row, J.*) AMBIYER In re. 181 L C 61 = 11 R M 768 = 40 Cr L J

1939 M W N 239 = 49 L W A I R 1939 Mad 375 = (1939) 1 M L J

—S 5 (1) (d) and Proviso (ii)—*Scope and effect—Sale of butter in sealed tins as purchased from Butter company—Extra moisture getting admitted in process of manufacture—Conviction for sale of butter containing water—Sustainability*

The petitioner, who was the proprietor of an oilman stores offered for sale butter in sealed tins in the state it was purchased by him from Lord's Butter Company. He was charged and convicted under S 5 (1) (d) of the

important and so serious that it renders the order of dismissal a nullity. Omission to give notice to the officer or to hear him before the order of dismissal is passed cannot be held to be such a defect or lacuna, in the absence of any provision in the Act for such notice or inquiry (*Fandrang Row and Abdur Rahman, JJ.*)

—*Grounds—Inmate of brothel—Liability as such.*

The fact that a person is an inmate of a brothel does not warrant his or her conviction under S. 5 (1) of the

ture of the butter.

Held, that in view of proviso (ii) to S 5 no offence could be deemed to have been such a case, and the conviction of the pet

Y. D 1939—52

MADRAS SURVEY AND BOUNDARIES ACT
(VIII OF 1923) Ss 11 and 12—*Survey of estate—*
Survey officer laying down boundary—No dispute by
any one—Subsequent survey—Power to alter boundary
laid down at former survey

Where a survey of an estate is undertaken and completed and no dispute has been raised by the Government or any one of the owners to the boundary as laid down by its own officer, the survey officer is bound at a new survey to adhere to the boundary laid down at the former survey. The Government whose officers laid down the boundary at the former survey is not entitled, except on the ground of change of ownership at a later survey, to alter that boundary. (*State of Madras v. Mahomedan Law*)
MAHARAJAH OF PUTTAPURAM v. SECRETARY OF STATE FOR INDIA 1939 M W N 431—
AIR 1939 Mad 581—(1939) 2 M L J 90

—S 13—*Burden of proof—Suit to set aside decision of Survey Officer—Onus*

In a suit for modification of the decision of the Survey Officer under S 13 of the Survey and Boundaries Act the plaintiff who challenges the order of the Survey Officer must prove by satisfactory evidence that the survey stone or landmark in question is not in place owing to lapse of time is no ground for upholding contention on no reliable evidence. (*Parada Abdur Rahman v. State of Madras*)
EVUGAN CHETTIAR

DAR OF SIVACANGA 1939 M W N 811

—S 13—*Suit under containing prayer for possession—Court fee* See COURT FEES ACT (AS AMENDED IN MADRAS), S 7 (iv) (c) AND (v)

1939 M W N 811

MAHOMEDAN LAW

Applicability
Co heirs
Divorce
Dower
Family arrangement
Gift
Marriage
Minor
Religious office
Succession
Wakf
Will

—*Applicability—Cutchi Memon—Will by—Law applicable—Will already executed—Decision to alter by inserting provision for cancellation of particular*

declaration is necessary as long as the intention of the testator is not definitely ascertained. (*A Cutchi Memon*)

444) that the letter and the telegram could not be taken into account for the purpose of the executor's duty to probate along with the will as they were not a definite decision by the testator that the provisions which he had made in his will with regard to school fees should

MAHOMEDAN LAW.

be cancelled. (*Leach C J and Kunhi Ramani, J*)
ABDUL HAMEED v. MAHOMED YOUSUF

50 L W 754—1939 M W N 1160 (2)
—*Applicability—If can be excluded by agreement of parties*

The personal law of succession of a Mahomedan

AIR 1939 Sind 107
—*Applicability—Mahomedan—Jats migrating from Punjab to Sind—Law of Succession—Customary law or Mahomedan Law* See CUSTOM (PUNJAB)—APPLICABILITY
ILR 1939 Kar 475

—*Co heirs—Nature of right and interests—Alienation of undivided share from one co heir—Rights of as against other co heirs—Liability to creditor of estate—Jurisdiction suit—Equities*

The nature of the tenure of the heir of a deceased

estate into the hands of a bona fide purchaser for value to whom it has been alienated by his heir-at-law. As against the other heirs the claim of the bona fide purchaser to have his share in the particular plot assigned to him is not absolute, but is subject to the rights and equities of the other co-owners or tenants in common. A co-owner or a tenant in common can always file a suit for partition and have his share defined and delivered to him. The Court in effecting a partition is bound to adjust all the equities existing between the parties and

assigning to the wrongdoer the part which he has wasted. Ordinarily it would be just and proper to allocate properties which have been alienated to the shares of the alienors. But where it is not practicable or equitable, the Court is not bound to allot those properties but might allot any other properties and the alienors' only right is to have recourse to the properties so allotted. It may be that the substituted property or security may

alienation of an undivided share in a specific property incident of the adjustment of legal rights of the heirs of the suit for equitable rights of

person who derived title from the *pendente lite*. The actual division of all the properties with a charge over the difference in favour of the heirs of the *pendente lite*. (*Perkash v. Abdul Wahab*)
GOON RIBI v. ABDUL WAHAB
C 778—1939 M W N 346—
AIR 1939 Mad 306

—*Co heirs—Representative capacity—Some heirs—If can represent entire estate or other heirs—Suit by or against some only of the heirs to recover debt due to or by the deceased—Parties to and frame of*

Under the Mahomedan Law each heir inherits a separate and distinct share, the theory of representation is unknown to the Mahomedan Law, in other words,

MAHOMEDAN LAW.

one heir does not represent the other heirs. Each of the several heirs in possession of the assets of the deceased is to the extent to which he is in possession, a legal representative of the deceased person, and no one of them represents the entire assets or estate of the deceased. The special rule as to representation by managers of joint Hindu families cannot be applied to a case where a creditor of a deceased Mahomedan seeks to recover his debts from some of the heirs only of the deceased. A creditor of a deceased Mahomedan instituting a suit against some of the heirs of the deceased in possession of his property to recover his debt, can succeed only to the extent of the share or shares of the debtor's heirs who are parties to the action. Since, having regard to the unity of title and unity of interest of the entire body of heirs, some of them cannot represent the others, a suit by some heirs only to debt due to the estate of the deceased is defeated by the ground of absence of title or lack of representation in the heirs who sue. Such a suit essentially must be on behalf of the entire body of heirs and must conform to the requirements of law. The law will not enable different sharers to institute different actions on that debt in proportion to their respective interests in the estate of the deceased. In an action to recover a debt due to the estate of a deceased Mahomedan, the claimants must in the first instance represent the totality of the estate of the deceased and the interest of his heirs (*Wadia and Wamoodew, JJ*) *VIKRAMADRAPPA v. SHERKAT* 11 R. 1939 Mad 232 = 182 IC 539 = 12 R B 15 = 41 Bom L R 249 = A I R 1939 Bom 168

— *Divorce—Talāk—When takes effect*

If an acknowledgment of talāk is made by the husband, the divorce will take effect upon which the acknowledgment is made (*and Ganga Nath, J.*) *ASMAT UNNISA* 181 IC

1939 A.W.R. (H.C.) 493 = 1939 A L J 804 = A I R 1939 All 592

— *Dower—Decree for—If creates a charge against the husband's estate*

A decree for dower obtained by a widow of a Mahomedan against the other heirs even though it may be real, a ch. Rad.

W. whole may be treated as a sale and a registered instrument "SHAR"

542 = 313

— *Dower—Possession of widow in lieu of—Consent of husband or heirs—Necessity*

If a Mahomedan widow entitled to dower has not obtained possession lawfully, that is, by contract with her husband, by his putting her into possession, or by her being allowed with the consent of the heirs on his death to take possession in lieu of dower and thus to obtain a lien for her dower, she cannot obtain that lien by taking possession adversely to the other heirs of property to the

MAHOMEDAN LAW.

— *Dower—Right to—Amount of dower—Husband's means—If relevant.*

The wife is entitled to recover the whole of the dower fixed, however large it may be, from her husband's estate without reference to his circumstances at the time of marriage or the value of his estate at his death, 2 All 573, relied on (*Alfa Bu Offg. C.J. and Mackney, J.*) *EBRAHIM v. FATIMA BIBI*

(1939) Rang L.R. 383 = 179 IC 477 = 11 R R 321 = A I R 1939 Rang. 28.

— *Dower—Right to—Marriage dissolved by apostasy of wife.*

Under Mahomedan Law, even if a divorce is brought about by the operation of law on the apostasy of the wife, she is entitled to the whole dower if consummation of the marriage had taken place before such divorce.

1939 Rang. L. R. 383 = 179 IC 477 = 11 R R. 321 = A I R 1939 Rang. 28.

— *Dower—Widow's lien.*

The Mahomedan Law would entitle a widow to hold the property until her dower debt is paid, only if she has lawfully and without force obtained possession of the same. Such possession must initially be obtained by the widow on the ground of her claim for her dower debt, and it would be in lieu of her dower where the dower contract provides it or she has been put into such possession by her husband in his lifetime or by his heirs after his death (*Sukhdonarain J*) *MST. SARDAK BEGUM v. MOHALWI ABDUL AHMAD* 1939 M L R. 192 (Civ.).

182 IC 801 (2) = 12 R A 38 = 1939 A L J. 642 = 1939 A W R (H.C.) 889 = A I R 1939 All 318.

— *Family arrangement—Transfer to female—Limited estate—Validity.*

12 R F 158 = 20 Pat L T. 323 = A I R. 1939 Pat. 406.

— *Gift—Delivery of possession—Evidence—Donee entering into transaction of sale of land gifted to him—Sufficiency.*

The transactions of sale by donee of land gifted to him are not acts of possession although they are acts by which title to the property was asserted within the meaning of S. 13, Evidence Act. If the evidence is clear that no possession was given, the mere fact that the donees entered into this transaction would not be sufficient to establish the possession which it was necessary for them to establish in order to prove a completed transaction. But these transactions may be taken into all the circumstances of the case as proving or helping to establish the

MAHOMEDAN LAW

Gift—Delivery of possession—Gift by father to daughter—Declaration of possession—Sufficiency for validity of gift

In the case of a gift by a Mahomedan to his daughter, it is not necessary that the donor should physically depart from the premises with all his goods and chattels and the donee should then formally enter into possession. A declaration of possession given to the daughter would be sufficient to give possession at any rate of the house in which lived the family consisting of the donor and the donee (*James and Kowland, JJ*) **MT NAUOZI v NAJAF ALI SHAH** 184 IC 508 = 6 BR 53 = 12 RP 218 = A I R 1939 Bom 222

Gift—Delivery of Father and daughter in past to be delivered—Recital daughter—Sufficiency

When a person is present on the premises proposed to be delivered to him a declaration of the person previously possessed puts him into possession. This principle

Gift—Delivery of possession—Proof—Recitals in deed—Value of

Where a deed of gift recites that the donor has given up possession of all his donee such a recital is binding on the donor (*Davis J C and Tyabji*) **KHATUN v SECRETARY OF STATE**

ILR (1939) Kar 348 = 179 IC 252 = 11 RS 124 = A I R 1939 Sind 9

Gift—Essentials for validity—Assignment of insurance policies—Gift of complete

It is essential for the validity of a gift that there should be a declaration of the gift by the donor an express or implied acceptance by the donee or on behalf of the donee and a delivery of possession of the subject of gift by the donor to the donee. Where certain insurance policies are assigned by a husband to a wife there is a

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Gift—Hiba bil ewaz—Consideration not paid but promised—Validity

The consideration for the *Hiba bil ewaz* must be actually paid and there must be a *bona fide* intention on the part of the donor to divest himself in present of

Gift—Hiba bil ewaz—Presumption of valid hiba

Whenever a transaction is relied upon *hiba bil ewaz* it necessarily includes the fact that it is a *hiba* valid according to Mahomedan law (*Davis J C and Tyabji JJ*) **SARDAR KHATUN v SECRETARY OF STATE** **ILR (1939) Kar 348 = 179 IC 252 = 11 RS 124 = A I R 1939 Sind 9**

MAHOMEDAN LAW

Gift—Validity—Delivery of possession—Necessity—Gift by Sunni Bohra widow to daughter's son—Donee minor living in the property gifted along with his mother and donor—Parents of donee alive—Gift not accompanied by actual delivery of possession nor relinquishment of control by donor—Recital in gift deed as to delivery of possession—Sufficiency

The validity of a gift made by a Sunni Bohra Mahomedan widow has to be determined by the Mahomedan, though as to the questions of succession and inheritance the Hindu Law will apply. The rule of Mahomedan Law that the gift should be accompanied by delivery of

of control by the donor is effected the gift is not valid. The fact that the donee is the daughter's son of the donor (his grandmother) and that he is a minor living with his mother and grandmother in the house gifted when the donor was dead, and when the donee was being alive, nor the recital in the deed can do away with the requirement of delivery of possession. The gift

is therefore incomplete and void in law (*Brownfield and Macklin, JJ*) **MURBAT v ABRAHAM MAHOMED** 41 Bom LR 825 = A I R 1939 Bom 449

Gift—Validity—Gift by true owner of property to a minor

which is in the hands of a minor is valid under Mahomedan law. The gift is complete if the donor or she can to perfect the contemplated gift and to enable the donee to acquire possession of the property (*Reverend and Verma JJ*) **MAQBUL HUSAIN v ZAINUL NISA BIBI** 182 IC 742 = 12 RA 37 = 1939 A WR (HC) 256 = 1939 A LJ 235 = A I R 1939 All 435

Marriage—Ante nuptial agreement—Provision for maintenance in case of disagreement—Validity

An agreement by a Mahomedan husband at the time of marriage providing for payment of maintenance to the wife in the event of disagreement, is not against public policy (*J J*) **ABBAS C W N 1059**

to Christianity (*Bennet and Begam*) **39 A LJ 65 = 1939 A WR (HC) 76**

Marriage—Dissolution—Accusation of adultery—Principle of retraction—Retraction in deposition

The purpose behind the principle of retraction is to give the husband a *locus penitentialis* before the marriage is dissolved. The object is to re-establish cordial relations between husband and wife. The retractor, if he is a *bona fide* and not a mere device for the dissolution of marriage. If there is no statement in the written statement that the accusations of adultery made by him were made in good faith, and if he is found to be false he is liable to the same penalty. Again if the accusations made by him are found to be true he withdraws them unconditionally the retraction can be of no help to him because if the accusation is true there is

MAHOMEDAN LAW.

no cause of action for the suit. A retraction in the deposition cannot be availed of because it is made after the commencement of the hearing of the suit. (*Akram, J.*) SHAMSANNESSA KHATUN v. MIR ABDUL MANNEF. 70 C L J. 289

motive of conversion is genuine or a device to have the marriage dissolved (*Abdul Qayoom, C J and Wazir, J.*) GUL MAHOMED v. AHMAD BIBI.

41 P L R J and K 1.

—Marriage—Option of puberty, exercise of—Point of time—Knowledge of marriage—Onus—Evidence Act, S. 106.

that she has the power to repudiate the marriage As the fact that a woman has knowledge of her marriage or of her right particular time, mu the burden of proof Evidence Act, be o HUSAIN v. AMIR

—Marriage—Consent of bride—

Under the Mahomedan Law marriage is a contract, and a marriage celebrated against the wishes of an adult bride and under compulsion cannot be regarded as valid. The consent of an adult virgin is essential for the validity of her marriage among the Shafi sect of Sunni Mahomedans (*Lokur, J.*) SAYAD MOHIUDDIN v. KHATIJABI. 41 Bom L R 1020

A L R 1939 Bom 489

—Marriage—Validity—Minor girl given in marriage by father—Right to annul marriage.

Under Mahomedan Law, the father of a minor girl is competent to give her in marriage and that marriage is irrevocable and cannot be annulled by the girl on attaining puberty, when no fraud or dishonesty on the part of the father is shown to exist (*Abdul Qayoom, C J and Wazir, J.*) ZANA BIBI v. AZIZ MIR

41 P L R J & K 99

—Marriage—Suit for dissolution of marriage on ground of impotency—Limitation See LIMITATION ACT, S 23 AIR 1939 Lah 454

—Marriage—Validity—Second marriage by Indian Christian after conversion to Mahomedanism—Dissolution of his property.

A Christian domiciled in India can, after his conversion to Mahomedanism, contract a valid marriage with a Mahomedan wife, even though the first one with the Christian wife subsists. There is nothing either in Act XV of 1872 or in the Indian Divorce Act which would expressly invalidate this marriage. On his death as a Mahomedan, his property would devolve in accordance with the Mahomedan Law. Neither the Caste Disabilities Removal Act nor S. 37 of the Civil Courts Act

(Henderson

N CHANDRA

C L J 338=

12 R C 126=

939 Cal. 417

—Minor—Guardian de facto—Powers of—Mortgage with personal covenant to pay off decree on mortgage executed by such guardian—Validity against minor—Contract Act, S 68—Specific Relief Act, S. 41—Applicability.

MAHOMEDAN LAW.

No decree can be passed on the strength of a mortgage of a Mahomedan minor's property executed by the mother of the minor as *de facto* guardian. A *de facto* guardian of a Mahomedan minor cannot bind the minor or his estate with a personal debt unless it can be brought

the wants of the minor, the law of the minor's rather than the legal

guardian. The mother or other relative looking after the child has legal right to supply the child's personal wants and presumably for that purpose can pledge the child's personal credit. But a borrowing on the personal credit of the minor to clear off a decree on a mortgage executed by the *de facto* guardian herself on behalf of the minor cannot be deemed to an act arising from the

a borrowing cannot bind of the Contract Act does not ie Specific Relief Act apply,

so as to make the minor liable to surrender the benefit, because a minor whose property has been made subject

—Minor—Major members carrying on business after father's death—Debts incurred by—Liability of minor member—Utilisation of minor's assets in business—Minor maintained out of income of business—Effect—If makes minor a partner in business.

The principles applicable to a joint family business conducted by the manager of a joint Hindu family are not applicable to a business carried on by the major sons of a Mahomedan trader after his death, and the question whether the business so carried on by them is the same as their father's or not can make no difference in the determination of the question of the liability of minor sons for debts incurred in connection with such business. If the major members of a Mahomedan family make profits by carrying on a business utilising therein the share of a minor member in the common assets, it is open to the minor to claim a share in the profits thus made, but the managers of such a business in a Mahomedan family have no right to impose any liability on the minor members of the family. Neither under the Mahomedan Law nor on general principles defining the relations between a guardian and a ward, has a guardian as such any power to carry on business on behalf of his ward, especially if the business is one which may involve the minor's estate in speculation or loss. The minor's option to claim a share in the profits made by his guardian by the use of his assets rests on the principle defining the liabilities of trustees, executors, *executors de son tort* and *de facto* guardians. Even if the minor has no independent means of his own, the mere fact that the major sons feed their minor brother or support him from out of the income of their business will not make him a partner in their business nor make him liable for its debts. But when the major brothers have been constituted managers on behalf of their minor brother of considerable properties under a settlement deed of their father, the minor must be taken to have been maintained out of his own resources, though in fact the income of the business may have been used for that purpose. That would make no difference in law, when the income from the minors more than sufficient to meet his

MAHOMEDAN LAW.

charter and Pandrang Row JJ) AHAMED IBRAHIM SAHIB v MEYYAPPA CHETTIAR 1939 M W N 976
 —Mosque—Muttawalli—Office of—If can be held by society registered under Societies Registration Act See SOCIETIES REGISTRATION ACT, S 20

50 L W 734.

—Religious office—Succession—Right of females—Astan—Mujavarship—Woman—If can hold

A religious office can be held by a woman under the Mahomedan Law, unless there are duties of a religious nature attached to the office which she cannot perform in person or by deputy. Where the duties of *Mujawar* consist of reading the Fatwa, offering prayers and incense and looking after the general management of a shrine or *Astan* female succession is not barred, and a female is entitled to succeed to the *Mujawar* land (*Lokur, J*) HUSAINI v SAYAH KHAIRUDDIN 41 Bom L R 875 = A I R 1939 Bom 487

—Succession—Daughters' claim—Defeating of—Grounds

Where the daughters of a deceased Mahomedan claim possession according to their shares over the property left by their father such a claim cannot be defeated except by reason of some act of the daughters or some act of the father.

1939 A L J 642 = 193

—Succession—Nephews

If a Mahomedan dies leaving a daughter and nephews, the nephews succeed, if they succeed at all merely as residuaries (*Skemp J*) ISMAIL v RASHID 41 P L R 572 = A I R 1939 Lah 525

—Succession—Sunni Mahomedan—Amount in Provident Fund—Right of succession to—If belongs to nominee solely or to all the heirs

Provident fund moneys are the property of a deceased employee and pass on his death to his heirs whoever be nominated by him for the purpose of receiving the moneys from the fund and for giving a full and sufficient quitance to the fund. Hence the moneys standing to the credit of a deceased Sunni Mahomedan in the Provident Fund at the time of his death are part of his estate and subject to the personal law of succession of the deceased as a Sunni Mahomedan (*Davis J C and Tyabji, J*) MT LATIFANBAI v MT SAKINA-BAI 181 I C 770 = 11 R S 240 = A I R 1939 Sind 107

—Wakf See also MUSSALMAN WAKF ACT.

—Wakf—Beneficiaries—Right to use

Wakfs are made of very different kinds of property

sely to it can be brought by a beneficiary. But it is only in special circumstances that a beneficiary and not the mutawalli is the proper plaintiff by whomsoever brought the right is vested by a suit brought to recover for the wakf property held adversely to it is the right of the wakf itself and it is asserted on behalf of all interests therein whether present or future absolute or contingent (*Sir George Rankin*) SAADAT KAMEL

MAHOMEDAN LAW

HANUN v ATTORNEY GENERAL PALESTINE

1939 A C 508 = 183 I C 101 = 12 R P 47 = A L R 1939 P C 185 (P C)

—Wakf—Constitution of—Use of term wakf, if necessary—Dedication, if necessary.

In order to constitute a wakf it is not necessary that the term 'wakf' should be used. Nor is it necessary that there should be an express dedication of the property to the ownership of god (*Zia-ul-Haque and Radha Krishna Srivastava, JJ*) HAIDER HUSAIN v SUDAMA PRASAD 184 I C 127 =

12 R O 85 = 1939 O W N 858 = 1939 O A 703 = 1939 A W R (O C) 182 = 1939 O L R 584

—Wakf—Creation—Deed failing in great part as wakfnama—If can be upheld as valid testamentary disposition

A wakf can be made by will. There is no reason why, because a deed cannot operate as regards some property as wakfnama it should not operate as regards that property as a will within the limits of the testamentary capacity of the settlor or testator. Therefore the question whether a deed failing in great part as a wakfnama can be held good as a valid testamentary disposition by

—Waqf—Creation of—Evidence—Plea of undue influence—Onus

Where a document creating a waqf executed by a deceased person is challenged by one claiming under him on the ground of its having been brought about by undue influence the onus is on the person challenging to prove that the document was signed under the undue influence of the opposite party or others acting on behalf of the Mahomedan community (*Lord Porter*) MAHBUB SINGH v ABDUL AZIZ KHAN

I L R (1939) Kar 64 (P C) = 43 C W N 252 = 1938 A L J 1223 = 5 B R 157 = 1939 M W N 15 = 1939 P W N 57 = 41 Bom L R 668 = 1938 A W R (P C) 206 = 1938 O W N 1216 = 1938 O L R 490 = 178 I C 386 = A I R 1939 P C 8 (P C)

—Waqf—Creation of—Muslim grave within private enclosure of Hindu—No proof of chadar, urs etc—Character of property

Where it is found that a grave of a Muslim is situated in the midst of a private enclosure belonging to a Hindu and where the claim of the Mahomedans to the performance of urs and offering of chadar have not been mere fact of of the land character of (*Verma JJ*)

R A 536 =

A L J 115 =

1939 A 219

—Wakf—Dedication—Proof—Long user

Dedication may be established by user for a long time. Where on a portion of a village shamilat a khanka was allowed to be built, a number of people to be buried and a *daradara* built for use in connection with the khanka and kothas constructed for the convenience of travellers and other worshippers of the shrine without objection by the proprietary body,

MAHOMEDAN LAW.

Held that all these facts, taken together, were clear proof of dedication. (*Tek Chand, J.*) GHULAM MOHY UD-DIN v. MAHAMMAD DIN. 41 P L R 283 = A.I.R. 1939 Lah 313

—*Wakf—How created.*

A wakf can be created by oral declaration and dedication. But where wakf is made by deed the provisions of S. 17(1)(b) and S. 49, Registration Act, must be enforced. (*Mysa Bu and Mostofy, J.*) DAW EIN v. DAW CHAN THA. A.I.R. 1939 Rang 365

—*Wakf—Mutawallis—Appointment of—District Judge as kazi—Power of to appoint in summary proceeding—Power to appoint Deputy Mutawallis or to decide right to succeed as Mutawallis under deed of wakf—Procedure.*

There is no question that under the Mahomedan law

under the deed of wakf

Judge as a principal Civ

has, by virtue of his pos

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has no power in a summary proceeding to appoint another Mutawalli in place of one who is in office. That can only be done in a suit instituted either under S. 92 C. P. Code or under the Religious Endowments Act. Appointments in summary proceedings not being appealable, should be made only in cases of emergency and must be subject to the result of any suit. The District Judge has, however, no jurisdiction to decide, in a summary proceeding, the question whether under a wakf deed of the founder a particular candidate is entitled to succeed as Mutawalli in succession to the last Mutawalli. Such question can only be decided in a suit. The District Judge has the power to appoint a candidate for a wakf. (*J.*) BIBI

ZOHRA v. BIBI HAB RUNNISA

18 Pat 417 = 1939 P W N. 723 = 20 P L T 863

—*Wakf—Shah Lzw—Enjoyment of entire usufruct of wakf property exclusively reserved to—Lifetime—Rights of relations to commerce.*

MAHOMEDAN LAW.

Under the Mahomedan Law the property dedicated must be of a reasonably permanent character. Above all the wakf must be the owner of the property. Otherwise he has no permanent control over that property and its dedication will be invalid. Hence a Mahomedan widow who is in possession of her husband's property in lieu of dower has no right to dedicate that property. Investments in Government securities and shares in companies yield a regular income which can be expended on the maintenance of the objects of the wakf. But if on the other hand, a sum of money itself is dedicated and it is to be spent on the maintenance of the objects of the wakf it will be exhausted before long and it cannot be said that the property dedicated is of a reasonably permanent character as required by law. Where a widow in possession in lieu of dower dedicates the property to a

MAHAMMAD

HAUSUN.

A 322 =

L J 138 =

1939 A.W.N. (110) 101 = A.I.R. 1939 A 319.

—*Wakf—Validity—Creation by one in embarrassed circumstances.*

A wakf created by a Mahomedan in embarrassed circumstances is not on that ground a void transaction. (*Thom, C. J. and Ganga Nath, J.*) ZAMIR AHMAD v. QAMAR UN NISA. 1939 A.W.R. (H.C.) 800 = 1939 A.L.J. 1069.

—*Wakf—Validity if affected by subsequent conduct of heirs in parceling out the wakf property among themselves.*

The validity of a deed of wakf is not affected by a subsequent arrangement by the heirs of the wakif by which the wakif's estate including the wakf property is parcelled out among them. (*Thom, C. J. and Ganga Nath, J.*) ZAMIR AHMAD v. QAMAR UN NISA. 1939 A.W.R. (H.C.) 800 = 1939 A.L.J. 1069.

—*Wakf—Validity—Invalidity in part—If renders whole void.*

A wakfnama may be valid as regards some property

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mutawallis—Effect on validity of wakf

It is one of the essentials of the validity of a wakf that the settlor as such must not reserve for himself any interest in the wakf. If he reserves such interest the wakf is void. Whether a wakfnama is or is not valid by reason of a reservation by the settlor of an interest to himself in the dedicated property depends upon the words of the deed itself and a breach by the mutawalli or trustees of the trust does not render the trust invalid. If the settlor reserves an interest in the dedicated properties not to himself as settlor but to himself as mutawalli, his remuneration as mutawalli must be considered

—*Wakf—Transferor, if deity or mutawalli.*

When a wakf is made, the right of the wakif is extinguished and the ownership is transferred to the Almighty. The transferee is therefore the deity and not the mutawalli who is merely a manager. (*Mysa Bu and Mostofy, J.*) DAW EIN v. DAW CHAN THA. A.I.R. 1939 Rang 365

—*Wakf—Validity—Conditions—Widow in possession in lieu of dower—If can dedicate—Dedication of money if and when recognized—Suit by residuaries—Liability to contribute towards dower debt.*

MAHOMEDAN LAW

in relation to the value of the dedicated properties and not absolutely or in relation to needs or expenses of an

of the dedicated properties or is far in excess of his remuneration as mutwalli the wakf is invalid (*Davis C J and Weston J*) **ABDUL HUSSEIN MOOSAJI v SUGRAHAI** A I R 1939 Sind 322

—*Wakf—Validity—Rule against perpetuity—Special rule from generation to generation—Effect of*

A wakf is not governed by rules against perpetuity, and successive future life interests in favour of unborn persons are valid by the Mahomedan law of wakf. The special rule from generation to generation has no exceptional effect to make the particular descendant whose interest accrues thereunder take by purchase and not by limitation (*Sir George Rankin*) **SAADAT KAMEL HANUM v ATTORNEY GENERAL PALESTINE** 1939 A O 508—183 I C 101—12 R P C 47—

A I R 1939 P C 185 (P C)

—*Wakf—Validity—Wakf in respect of undivided property*

Under the Hanafi Law there can be a valid wakf in

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land is dedicated to be used as cemetery or a place to build a mosque on the dedication for construction and endowment of such a mosque or cemetery is

within the strictest limits (*Mukherjee J*) **MD AYUB ALI v AMIR KHAN** 181 I C 76—11 R C 772 68 C L J 472—43 C W N 118—A I R 1939 Cal 268

—*Will—Power of appointment—Denial of such*

The power of appointment. Such a delegation of power in marriage in divorce recognition shows that a contrary to Mahomedan Law and as such a power to appoint an heir may be given to a legatee by will. Such a power would be denied only if it is against public convenience if mischievous or general principles of Mahomedan Law exercise of such a power (*Thomas J*) **KHAN v NAWAZISH ALI KHAN**

—*Will—Validity—Determination of share of assets of testator—Taluqdari property—If can be taken into consideration*

As the Oudh Estates Act has laid down specific rules for devolution of taluqdari property and has in this res

MALABAR LAW

MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (I OF 1900) S 19—Scope

—*Agreement by tenant to pay landlord full trees spontaneously grown cut by him—*

of the Malabar Compensation for Tenants' Improvements Act merely prevents a tenant from entering into a contract which takes away or limits his right to make improvements and on the termination of the tenancy to claim compensation for them in accordance with the Act. The section does not preclude a landlord and tenant from agreeing that the tenant shall pay full compensation when he fells trees spontaneously grown during the tenancy and the felling does not constitute an improvement to the holding (*Leach C J and Somayya J*) **SREEDEVI v KURIKKAL**

I L R (1939) Mad 995—50 L W 418—1939 M W N 890—A I R 1939 Mad 931—(1939) 2 M L J 680

MALABAR LAW—Adoption—Benefits of—Nair tarwad—Affiliation of members of one tarwad into another—Rights in natural family—If retained—Claim to maintenance from natural tarwad—Sustaining ability—Custom—Putravakassam property

Malabar Law is essentially a customary law. When a person is adopted from one tarwad into another it

be decided by having recourse to evidence as to custom

Held on the evidence in the particular case that no custom was made out which would support the claim that the adopted persons who belonged to the Nair

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A I R 1939 Mad 564—(1939) 2 M L J 697

—*Gift—Nair tarwad—Purchase of properties by brother in names of sisters—Estate taken—Joint tenancy with rights of survivorship—If created—Presumption*

ired in the names of
funds provided by their
a beneficial interest in
presumption that the
rights of survivorship

To so hold would be to apply to Indian conditions an English rule of conveyancing which does not apply in India. Joint tenancy with rights of survivorship is

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said that there is no tenancy in common from the mere fact that the sisters are made joint holders of the properties in the documents of title (*Wadsworth J*) **KORAN v GOVINDAN NAMBIAR** 181 I C 672—1939 M W N 381—A I R 1939 Mad 479—(1939) 1 M L J 604

—*Melcharth—Grant of—Properties on Kanom and properties held on—Single melcharth comprising both—*

anted by the karnavan of a tarwad is ground that it comprises properties

MALABAR LAW.

which were the subject of a prior kanom and also pro-
perties which were previously the subject of a verumpat-
tom lease, when the customary period of the prior kanom
and verumpatton lease has expired. The fact that the
two sets of properties have been included in the new
melcharch does not invalidate the transaction. (*Venkata
sutha Rao and Abdur Rahman, Jf.*) MANAVEDAN v
VEERAYAN UNNI.
1939 M.W.N. 458=
A I R. 1939 Mad 751

—*Tarwad—Karnavan—Right of
tarwad in suits—Right of junior m.
karnavan under O. 1, R. 8, C. P
junior members—Death of karnavan—
ving plaintiffs to continue and prosecute suit—Circum-
stances to be shown.*

Under the Malabar Law, except under very special
circumstances, no junior member should be permitted to
usurp the functions of the karnavan of a tarwad. The
filing of a suit by the junior members on behalf of the
tarwad amounts to an interference with the karnavan's
power of management. Where the karnavan has dis-
abled himself from suing, the Anandiravans (junior
members) can bring the suit. An alienating karnavan
would not ordinarily be expected to bring a suit to set
aside his own alienation, and that would be a special
circumstance entitling an Anandiravan to sue. There is
no distinction in this respect between a suit to recover

has ceased to do so. Where the alienating karnavan is
dead, no junior member should be allowed to bring a
suit without alleging misconduct on the part of the
succeeding karnavan or without stating that he was con-
sulted. All that the junior members need show is that
the karnavan was approached but refused to take action.
It is not necessary to go into the question whether the
karnavan rightly refused or not. Where the karnavan

chose to bring the suit under O. 1, R. 8, C. P. Code
make any difference. It would
to apply for leave under O. 1,
much more so to allow the junior
him as plaintiffs, because as the head of the tarwad, he
would fully represent it. The fact of approach is sufficient
under O. 1, R. 8, in fact,
legal right, and there is no
succeeding Karnavan is
decessor. The then karnavan by electing to sue cannot
annihilate the right of his successor to be the mouth piece
of the tarwad and to represent the tarwad in his own
person. But where the succeeding karnavan fails to apply
to bring himself on record within the period of limita-
tion and the suit is in peril of abating, the failure to
apply would bring into danger the tarwad's right, this
inaction of the karnavan affords a special ground
which would justify the prosecution of the suit by the

MALABAR LAW.

It cannot be held that a junior member of a
Malabar tarwad has no right to maintain an action for
the removal of the karnavan except in conjunction with
all the other members of the tarwad. It cannot be
denied that every member of a tarwad has a right to
see that the tarwad affairs are conducted by the karnav-
an properly, and if he finds that a karnavan has not
been acting in the interests of the tarwad, he would have
the right to sue for his removal. But all the

which he is interested with the other members jointly,
and he is to do so not in his individual interest but in
the interests of all the members of the tarwad as well.
(*Abdur Rahman, J.*) SANKARA VARMA RAJA v.
RAMA VARMA RAJA.
1939 M.W.N. 832=
60 L.W. 375 = A.I.R. 1939 Mad 902=
(1939) 2 M.L.J. 506.

—*Tarwad—Tarashi—Thavashi property or sep-
arate property—Presumption—Property standing in
name of member—If joint property—Trade carried on
by karnavan or member with consent of other members—
Acquisition made by such karnavan or member—If
separate property or thavashi property*

There is no presumption that when a family is joint

is joint family property to establish the same. Where
it is proved or admitted that a family possesses sufficient
nucleus with the aid of which the member might have
made the acquisition, the law raises a presumption that
it is joint property, and the onus is shifted to the particu-
lar member to establish that the property was acquired
by him without the aid of that nucleus. Where with the
consent of the other members of the family an individual

used in the trade or
he family allow the
member to acquire
vledge that he has
those moneys, but the
therefrom for himself
property or joint property,
accountable to the family
for the moneys so utilised by him. Such loans would in
fact be loans or advances made by the family to the
individual member or karnavan or manager. The mere
fact that the karnavan or manager or individual member
mixed his private funds with the family funds would
not effect a blending so long as accounts are kept and no
presumption can be raised that the member intended to
utilise his private funds for the family or thavashi and
that the acquisition must therefore be deemed to be on

(*Venkataramana Rao,*
1939) M.W.N. 4=
(1939) 1 M.L.J. 303
family property—If

The ordinary presumption is that all joint property is
portable and the rule of partibility must therefore prev

junior member—Maintainability—Joiner of all other
members—Necessity

Y. D. 1939—33

MALABAR TENANCY ACT (1930), S 20.

in the absence of evidence that some other rule is recognised by a particular community as binding upon it. There is no rule which says that property belonging to a family of Thiyyas of Calicut is impartible. It is for the party setting up a custom of impartibility to prove it. In the absence of such proof the ordinary rule of partition will apply (*Souhaya, f*) **KRISHNAN v RAMANATHA IYER** 50 L W 511 (2) = 1939 M W N 1037 = (1939) 2 M L J 718

MALABAR TENANCY ACT (XIV OF 1930) S 20—Scope—Suit for redemption on grounds not specified—Maintainability—Contract between parties in consistent with Act—Ejection on basis of—Right to

The terms of S 20 of the Malabar Tenancy Act quite clearly prohibit any suit being brought for eviction of a Kanomdar except on any of the grounds specified there in, quite irrespective of any contract or bargain between the parties. It is clear that the Act was intended to supersede the customary and contractual rights liabilities and incidents pertaining to the various forms of land tenure prevailing in the district to the extent to which such rights liabilities and customs ran counter to the provisions enacted therein (*Patanjali Sastri, f*) **CHANDU v SANKARAN** 50 L W 695

S 20 (5)—Applicability—Right to benefit of—'Landlord'—Meaning—Kuzhikanom—Subsequent kanom to another—Absence of attornment by kuzhikanomdar to kanomdar—Right of latter to claim benefit of S 20 (5)

A subsequent kanomdar from a jentmi who has already granted a kuzhikanom to another tenant lord within the meaning of S 3(a) of the Act so long as the kuzhikanomdar to him, because until the kuzhikanomdar kanomdar, he cannot be said to hold the kanomdar. The latter cannot therefore claim the benefit of S 20(5) of the Act which is available only to the landlord (*Lakshmana Rao, f*) **MANNAN v MARIYAMMA** 1939 M W N 382 = 49 L W 490 = A I R 1939 Mad 505 = (1939) 1 M L J 612

MALICIOUS PROSECUTION See TORT**MALKANA—Reduction in case of remission of land revenue—If available See LANDLORD AND TENANT—MALKANA** 1939 O W N 901**MARWAR—Adoption—Father, whether can go in****MARWAR C P CODE S 11**

goes back to the Jagirdar. (*Ranjimal and Sukhdonarain, f f*) **BHOPALSINGH v MADHOSINGH** 1939 M L R 221 (Civ)

Principles in T P Act—Applicability See T P ACT, S 51 1939 M L R 1 (Civ)**MARWAR BHOGLAWA RULES OF 1915—Whether include Baraskati**

The Bhoglawas Rules of 1915 relate to mortgages known as Bhoglawas and are not applicable to the case of a Baraskati **DAULATMUL v HARISINGH** 1939 M L R 9 (I K)

MARWAR CIVIL PROCEDURE CODE, S 11—Competent Court—Valuation—Over valuation of subsequent suit by addition of unsustainable claim—Effect of

A person cannot avoid the operation of the rule of *res judicata* by including in a subsequent suit a clearly unsustainable and therefore not a *bona fide* claim and bringing it in a Court of higher jurisdiction (*Awal Kishore C f and Sukhdonarain, f*) **UDAIRAJ v SHERSINGH** 1939 M L R 27 (C)

S 11—Court of competent jurisdiction—Meaning of

The words in a Court of jurisdiction competent to try such subsequent suit must be construed to refer to the jurisdiction of the Court at the time when the first suit was brought that is to say, if the Court which tried the first suit was competent to try the subsequent suit if then brought, the decision of such Court would be conclusive although on a subsequent date by a rise in

Judicata

The provisions of S 11 C P Code are not expressly made applicable to execution proceedings but the principles are applicable. Consequently it is incumbent on the judgment debtor, when he receives the notice of the application for execution made by the assignee of the decree holder to come forward and raise any objection that he may have to the execution of the decree by the assignee and if a point has not been raised at a previous stage of the execution petition it becomes barred by principles of constructive *res judicata* and cannot be allowed to be raised subsequently (*Nawal Kishore, C f*) **BERONMAL v DEEPRAJ** 1939 M L R 185 (Civ)

S 11—Rent Suit—Decision as to title—Res Judicata

In suits for recurring liabilities, e.g. a suit for rent, if the issue involved is as to the plaintiff's right to

Appeal to three Darbar—Certificate of fitness—Grant of**Jagirdars—Succession among—Chakrabarti grantee dying issueless—Jagir grant, whether reverts to Jagirdar**

It is well known principle of succession

period. But if a direct issue was raised and decided on the question of title and that question was gone into as if the right was sought to be decided once for all and

DURGIA v THIKANA SIVYARI 1939 M L R 169 (Civ)

MADRAS C. P. CODE, S. 11.

—S. 11—*Subsequent suit more extensive*—*Res judicata*.

Where the subject matter of the subsequent suit was not identical with that of the was much more extensive, held will not be barred by *res judica* J. and Ranjitmal, J.) DHARA

1939 M L R. 39 (C)

—S. 11, Expt 4—*Might and ought*—*Duty of party*

A party is bound to bring forward the whole of his case in respect of the matter in litigation. He cannot abstain from relying upon or abandon a ground of claim and afterwards make it a cause of fresh suit in respect of the same subject matter. (*Nawal Kishore, C. J. and Sukhdeonarain, J.*) UDAIRA v. SHERSINGH.

1939 M L R. 27 (C)

—S. 20—*Cause of action arising and some of defendants living outside jurisdiction of Court*—*Leave to sue*—*If necessary*

exercising its powers to grant or refuse leave to sue, the question of convenience of the parties should be taken into consideration (*Nawal Kishore, C. J.*) MST NENI v KISHENLAL 1939 M L R. 124 (Civ)

—S. 24—*Ground for transfer*—*Previous expression of opinion by Court*

Where the Court has expressed its opinion regarding the right and title of a party to the subject-matter of the suit, it is fit and proper that the case should be withdrawn from that Court. (*Nawal Kishore, C. J.*) SERAIMAL v PIRTHIRAJ.

1939 M L R. 243 (Civ)

—S. 24—*Transfer of case*—*Affidavit*—*Duty of Court to give detailed reply*

It is the duty of a Court, when an affidavit is sent to it, to give a reply in full details. The reply should, as far as possible, not be vague and indefinite. If a full and detailed reply is not given to the affidavit, there would be ample justification for holding that the contents of the affidavit are not (*Nawal Kishore, C. J.*) TILUKCHAND v MI

1939 I

—S. 35—*Costs incurred in Court of Wards*—*Plaintiff's right to* Act, S. 33.

Under S. 33 of the imperative for the credit Court of Wards and of the Act that this clause determined by the Court notified to the claimant

1939 M L R. 244 (Civ)

—S. 39—*Transfer of decree*—*Objection to jurisdiction of transferee Court*—*Proper forum*

An objection as to jurisdiction of transferee Court to execute the decree sent to it for execution, should be raised in the transferor Court (i.e.) in the Court which passed the decree and not in the transferee Court. (*Nawal Kishore, C. J. Ranjitmal and Sukhdeonarain,*

MADRAS C. P. CODE S. 115.

J.J.) RUGHNATH v. FATEHSINGH.

1939 M L R. 21 (C).

—S. 39 (1)—*Transferee Court having no pecuniary*

exceeds the limits of its pecuniary jurisdiction. (*Nawal Kishore, C. J. Ranjitmal and Sukhdeonarain, J.J.*) RUGHNATH v. FATEHSINGH. 1939 M L R. 21 (C).

—S. 50 (2)—*Execution against legal representative*—*Rurien of proof*.

The legal representative of a deceased judgment-debtor against whom the decree is sought to be executed, is liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of. It is for the decree holder to prove in the first instance, if the legal representative denies having received any assets of the deceased, that the deceased

THIKANA RAIPUR v. GANESHMAL.

1939 M L R. 190 (Civ)

—S. 51 (e)—*Execution against jagir land*—*Power of Court to grant lease*

According to S. 51 (e), C. P. Code, it is open to a Court to order execution, in addition to the modes provided in clauses (a) to (d) of the section, in such other manner as the nature of the relief granted may require. Consequently in execution of a money decree, the Court is competent to direct execution by granting lease of jagir land to the decree-holder, as the land is not liable to be sold and the judgment debtor is himself competent to give the land on lease (*Nawal Kishore, C. J.*) TH BIJAI SINGH v GULABDAS ROOPRAJ

1939 M L R. 194 (Civ)

—S. 115—*Interlocutory order*—*Revision*.

Ordinarily, chief Court will not interfere in revision from an interlocutory order where on the plaintiffs' refu-

1939 M L R. 190 (C)

—S. 115—*Order appealable*—*Revision, if com-*

1939 M L R. 199 (Civ)

3 115—*Order refusing to prosecute party or*—*Reason*

der granting or refusing sanction to prosecute a witness in a civil or revenue proceeding is revision under S. 115, C. P. Code. (*Nawal C. J. and Ranjitmal, J.*) AIDAN v. MST 1939 M L R. 55 (C).

—S. 115 (c)—*Scope of*

Clause (c) of S. 115, C. P. Code, has been purposely and advisedly left in indefinite language in order to empower the chief Court to interfere with gross and palpable errors of subordinate Courts and to prevent manifest injustice in non appealable cases. A.I.R. 1926 Cal. 530 Foll. (*Nawal Kishore C. J. and Ranjitmal, J.*) AIDAN v. MST. LALI. 1939 M L R. 55 (C).

MARWAR C P CODE S 149

—S 149—*Discretion of Court—Exercise of—Inability to raise money—Whether sufficient ground—Court Fees Act, S 4*

Where an appellant deliberately and to suit his own convenience paid in sufficient court fee on his appeal the Court could not exercise its discretion in his favour and give the appellant time to make good the deficiency. Consequently inability to raise money is not a sufficient reason for the exercise of discretion vested in a Court under S 149 (*Nawal Kishore, C J and Sukhdeonaraia, J*) **BIJALSINGH OF PALLI v ZORAWARSINGH** 1939 M L R 172 (Civ)

—S 151—*Restoration—Inherent power of Court—Execution application dismissed in default*

The Court, in exercise of its inherent power under S 151, C P Code, is competent to restore an execution application dismissed the ends of justice remedy may be prevented the Court from exercising its inherent jurisdiction if a proper case for restoration has been made **RAMSINGH v DEVISINGH** 1939 M L R 183 (Civ)

—O 1 R 8—*Principle and applicability*

O 1, R 8 is an enabling rule of convenience prescribing the conditions upon which persons when not

absent parties in such of the ways prescribed as the Court in each case requires while liberty is reserved to any represented person to apply to be made a party to the suit. The direction of all the matters is placed in

their privies **MOOLSINGH v SANGIDANSINGH** 1939 M L R 1 (IK)

—O 1, R 10—*Plaintiff claiming to be the adopted son of deceased—Adoption disputed—Reversioners, if proper parties*

The plaintiff claiming to be the adopted son of the deceased sued the defendants for rent and possession on the basis of rent note executed by them in favour of the deceased. The defendants repudiated the plaintiff's status as the adopted son of the deceased. Another per

—O 2 R 2—*Applicability*

O 2 R 2 requires that if all rights arising out of the same cause of action are not sued for together the portions abandoned cannot be separately sued afterwards. Consequently it does not bar a claim founded on a cause

MAEWAR C P CODE O. 9, R 13

General allegations of fraud however strong the words in which they are stated may be if unaccompanied by particulars are insufficient to an averment of fraud of which any Court ought to take notice (*Nawal Kishore, C J*) **ABDUL GAFOOR v PARASRAM** 1939 M L R 12 (O)

—O 6 R 14 and 15—*Co plaintiff not signing and verifying plaint—Effect of*

Failure of a co-plaintiff to sign and verify the plaint does not affect the presentation of the plaint and the suit must be deemed to have been duly instituted on their behalf if it was filed with their knowledge and authority (*Ranjitsmal, J*) **MAYACHAND v UMA** 1939 M L R 207 (Civ)

—O 6 R 17—*Amendment changing cause of action—Permissibility*

an entirely new old require total posite party and tion will not be allowed. The cardinal maxim of the law of amendment is that one should not amend so as to change the cause of action (*Nawal Kishore C J and Sukhdeonaraia J*) **KISHENLAL v JASRAJ** 1939 M L R 70 (O)

—O 6 R 17—*Duty of Court*

Under O 6 R 17, C P Code, not only is the Court on the point but under a duty to allow such a real question in issue to amendment will occasion no such as cannot be com terms to be imposed by ligent or careless the first he proposed amendment

the amendment should be allowed without injustice to the other party **AIR 1935 Mad 158, Foll** (*Ranjitsmal J*) **BIRDICHAND v SAMARDAR SINGH** 1939 M L R 4 (C)

—O 9 R 2—*Dismissal of suit under—Fresh suit*

of a suit under O 9, R 2, C P Code, titute a bar to the institution of a fresh me cause of action (*Nawal Kishore, C J and Sukhdeonaraia, J*) **MOTIDAN v POOSARAM** 1939 M L R 237 (Civ)

—O 9, R 7—*Non-appearance of defendant—Court directing ex parte proceedings and adjourning case to another date under O 17, R 2—Defendant, whether can apply to have ex parte order set aside*

O 17, R 2 empowers the Court either to proceed to dispose of the suit in one of the modes directed in that behalf by O 9 or to make such other order as it thinks fit. The last expression may be interpreted to mean the

The provisions of O 9, R 9, C P Code would apply only when the plaintiff in the former suit is the plaintiff in the subsequent suit and not otherwise (*Ranjitsmal and Sukhdeonaraia, JJ*) **BHOPALSINGH v MADHO SINGH** 1939 M L R 221 (Civ)

—O 9, R 13—*Ex parte decree, setting aside of—*

the Court has on the appli o deposit the decretal amount in Court or may order payments of

MARWAR C. P. CODE, O. 14, R. 1.

costs. It may even impose a condition that the applicant should find a surety who would be responsible for any amount that may be found due by him under any decree that may be subsequently passed. But before the Court proceeds to impose the conditions, it must take into consideration all the facts and circumstances and exercise its discretion in a judicious manner (*Nawal Kishore, C. J.*) **MUNNALAL v. KANAVALAL**

1939 M L R. 84 (Civ.).

—O 14, R. 1—*Framing of issues—Duty Court—Plea of fraud.*

Where the plaintiff alleges in the plaint that fraud was committed upon him by the defendant the Court ought to frame a clear issue to this effect (*Ranjitmal, J.*) **NEMICHAND v. BANSHI**

1939 M L R. 199 (Civ.).

—O 17, R. 3—*Applicability—Failure of plaintiff to furnish addresses of defendant and pay process fee.*

O 17, R. 3 C. P. Code, contemplates a decision of the suit on the merits and that implies that the suit has made some progress and there are materials on the record. Where, however, this is not the case the Court should proceed to act under the provisions of O 17, R. 2. Where, therefore, the plaintiff failed to furnish fresh addresses of the unserved defendants and pay a fresh process fee as ordered, *Alia* that the suit should have been dismissed under O. 9, R. 2, and not under O 17, R. 3, C. P. Code (*Nawal Kishore, C. J.* and (*Sukhdeonarain, J.*) **MOTIDAN v. POOSARAM**

1939 M L R. 237 (Civ.)

—O 21, R. 2—*Adjustment—Omission to certify—Whether amounts to fraud.*

Mere omission on the part of the decree-holder to certify adjustment or payments does not by itself, amount to fraud. (*Sukhdeonarain, J.*) **GUMA v. JETHA**

1939 M L R. 145 (Civ.)

—O 21, R. 2 and S. 47—*Uncertified adjustment of decree—Matter, if can be investigated under S. 47.*

No doubt, the question whether a decree has been paid or adjusted out of Court is one for the Court of execution to decide under S. 47, but if the judgment debtor has not got the adjustment or payment certified within the time allowed by law and the decree holder proceeds to execute the decree the dispute cannot be dealt with either under S. 47 or any other section relating to execution, for an uncertified adjustment or payment cannot be recognised by any Court executing the decree (*Sukhdeonarain, J.*) **GUMA v. JETHA**

1939 M L R. 145 (Civ.)

—O 21, R. 2 (2)—*Judgment debtor depositing decretal amount in Court—Whether must apply for issue of notice to decree holder.*

When a judgment debtor, prior to the decree-holder

MARWAR COURT-FEES ACT, Sch. III, Art. 9.

issued in any suit in which examination or adjustment of accounts is necessary. Accordingly it must first be shown that it is necessary to examine the accounts. Where a suit has been filed on the basis of a bond and the defendants merely stated that they do not know whether it had been executed by their father, a case for examination of accounts cannot be said to have been made out. (*Nawal Kishore, C. J.*) **GANESHILAL v. MANMAL**

1939 M L R. 200 (Civ.).

—O 39, R. 1—*Suit for permanent injunction—Refusal of temporary injunction—Propriety.*

In a suit for permanent injunction, the temporary injunction should not be refused where the refusal would defeat the object of the suit (*Ranjitmal, J.*) **ASSARAM v. MANGANMAL**

1939 M L R. 3 (O.).

—O 41, R. 20—*Discretion of appellate Court.*

It is a question for the appellate Court in its discretion to determine in each case whether or not it will make an order for the addition of a party as contemplated by O 41, R. 20, and a party will not be added as a respondent merely in order to enable him to file cross-objections (*Sukhdeonarain, J.*) **AKBAR ALI v. MANAKCHAND**

1939 M L R. 167 (Civ.)

—O 41, R. 27—*Additional evidence—Admissibility—Evidence discovered after decision of lower Court.*

Mere discovery of fresh evidence subsequent to the

the appellate Court requires the evidence so discovered, it should not be admitted unless it is shown that the party had exercised due diligence. The provisions of O 41, R. 27, C. P. Code, are not intended to allow a litigant who has been unsuccessful in the lower Court to patch up the weak parts of his case and fill up the gaps in the Court of appeal (*Nawal Kishore, C. J.*) **LADURAM v. CHHAGANMAL**

1939 M L R. 195 (Civ.)

—O 41, R. 33—*Reversal of decree in favour of non appealing party—Principles—Powers of appellate Court.*

As an ordinary rule an appellate Court will not reverse or vary a decree in favour of a party who has not preferred any appeal. In exceptional cases, however, O 41, R. 33, Marwar C. P. Code gives the appellate Court power to pass any decree which ought to have been passed, even if such decree would be in favour of a person who has not filed any appeal. This would be so where interference with the decree of the lower Court is rendered necessary in order to adjust the rights of the parties according to justice, equity and good conscience. (*Nawal Kishore, C. J.*) **MISIRIMAI v. RAWAT**

1939 M L R. 10 (C.)

MARWAR COURT FEES ACT, S. 7, (iv) (c)—*Suit for possession by dispossession of defendant and for dec-*

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suit for possession and the prayer for relief by way of declaration was merely redundant and surplusage. The plaintiff must pay an *ad valorem* court-fee. In all cases the Court should consider the substance of the plaint and see whether the prayer for declaration has not been joined unnecessarily for the purpose of escaping payment of *ad valorem* court fee (*Nawal Kishore, C. J.* and *Sukhdeonarain, J.*) **MOOLA R. DEVILAL**

1939 M L R. 240 (Civ.)

—Sch. III, Arts. 9 and 10—*Suit for possession of wife and restitution of conjugal rights—Court fee.*

P Code. (*Nawal Kishore, C. J.*) **MANMAL v. KANWAR**

1939 M L R. 193 (Civ.)

—O 21, R. 58—*Proceedings under—Nature of.*

An objection under O 21, R. 58, C. P. Code, is a *debetur* and must be decided in one way or another. It attaches to it a *debetur* (*Nawal Kishore*

1939 M L R. 112 (Civ.)

—O 26, R. 11—*Commission for examination of accounts—When may be issued.*

Under O. 26, R. 11, C. P. Code, a commission can be

MAHARWAR COURT OF WARDS ACT

The court fee payable on a plaint in a suit to obtain possession of a wife has been fixed at Rs 5 while for a suit for restitution of conjugal rights it has been fixed at Rs 10 the plaintiff therefore cannot be called upon to pay more than the amount fixed' (*Nawal Kishore C J*) *NARPATISINGH v MST MOHANI*

1939 M L R 69 (C)

MAHARWAR COURT OF WARDS ACT Ss 32 and 33—Decree against ward with Court of Wards as guardian ad litem—Civil Court if can entertain execution
S 32 of the Court of Wards Act does not apply to a case where a decree has been passed against a ward with the Court of Wards as his guardian ad litem. Consequently a Civil Court is competent to entertain and proceed with the execution of such a decree (*Nawal Kishore, C J*) *MAJI DEOLJI v BIJEYSINGH*

1939 M L R 33 (C)

S 49—Service of notice on Court of Wards—If condition precedent to filing of suit

The service of a notice on the Court of Wards as required by S 49 Court of Wards Act is a condition precedent and an indispensable prerequisite to the filing of a suit against the Court of Wards. A mere direction by the Revenue Minister advising the plaintiff to seek his remedy in Civil Court cannot enable the plaintiff to escape the consequences of not complying with the provisions (*Nawal Kishore C J and Ranjitmal, J*) *HUKAM SINGH v KISHORE SINGH*

1939 M L R 47 (C)

MAHARWAR CRIMINAL PROCEDURE CODE Ss 107 and 147—Applicability—Dispute over right of way

Ordinarily, when there is a dispute with regard to a right of way alleged by one party and the other there is a like the more appropriate 147 Cr P Code But to proceed under S 107 threatening to use violence the mere fact that the alleged right of way

WANU v PREMSINGH

S 103—Who cannot give a satisfactory account of himself—Meaning of

The expression 'who cannot give a satisfactory

MAHARWAR CR P CODE S 203

are insufficient. The power under this section should be used only after the Magistrate is satisfied that immediate prevention or speedy remedy is desirable (*Nawal Kishore C J and Ranjitmal, J*) *RAMJEE VAN v AGIARAM*

1939 M L R 8 (Cr)

S 147—Interlocutory order—Power of Magistrate to pass

Under S 147 Cr P Code a Magistrate is not competent to pass an interlocutory order which in effect amounts to a final order A I R 1932 Nag 83 Foll (*Nawal Kishore, C J*) *MST UDA v BHOOPESINGH*

1939 M L R 35 (Cr)

S 162—Police diaries—Use of—Powers of Court

There is no provision in S 162, M Cr 1 Code for allowing a Magistrate to compare the statements made by a witness to the Police during investigation with those made by him in Court. It is therefore not open to the Magistrate to use the Police diaries for the purpose of determining what offence has been made out (*Nawal Kishore C J*) *GOMARAM v NIZAM*

1939 M L R 1 (Cr)

S 162—Statement of witness to Police—Magistrate if can compare it with his evidence

It is not competent to a Magistrate to compare the evidence given by a witness before him with his statement before the Police taken during investigation (*Nawal Kishore C J*) *PABUDANSINGH v LICHMAN SINGH*

1939 M L R 70 (Cr)

S 181(3)—Receiving or retaining of stolen property—Place of trial

A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court with a the

(Kanjitmal, J) *SULTANSINGH v RAMA*

1939 M L R 18 (Cr)

S 198—Applicability—Offence under S 504 of

cent par

*(Nawal**KUMAR***S**

When

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decides to

trate to ask him whether he denies the existence of any

public right in respect of the way etc. It is only after the

question contained in S 139 (A) M Cr P Code

has been decided that the Magistrate will then if he

decides to go on with the case proceed under S 137 to

order (*Nawal Kishore C J and Ranjitmal, J*) *SULTANSINGH v RAMA*

1939 M L R 18 (Cr)

S 203—'Sufficient ground'—Interpretation

The expression 'sufficient ground' in S 203, Cr P

MARWAR CR. P. CODE, S 205

and the investigation, if any, made under S. 207, Cr. P. Code. Anything outside it is extra judicial and must be discarded. 9 Bom L R 742, Foll. (*Sukhdonaram, J.*) SUNDAR LAL v. JETHMAL. 1939 M L R. 6 (Cr.)

—S 205 (2)—*Per.*
dispensed with—Right of
answer questions.

Where a Court dispense of the accused, an appeal the performance of all acts that devolve upon the accused in the course of the trial. In such cases the pleader can plead guilty or not guilty under S. 255, Cr. P. Code, or make necessary answers to an examination under S. 342 Cr. P. Code, or even where the sentence is one of fine or S 356(2). (*Nawal Kishore, C. J.*) rain, J.) FATMA v. MSTR. SAKINA

1939 M L R. 37 (Cr.)

—Ss. 223 and 537—Single charge for offences—Irregularity.

Although according to the provisions of S. M. Cr. P. Code, there should be a separate for every distinct offence and two distinct offences should not be joined in a single charge yet in cases where offences though distinct can be tried jointly by virtue of the provisions of Ss. 234, 235 and 239, Cr. P. Code, the error in framing a separate charge in respect of several offences is an error in form rather than of substance and is not illegality but merely an irregularity covered by S 537, Cr. P. Code (*Nawal Kishore, C. J.* and *Sukhdonaram, J.*) AIDAN v. SARKAR

1939 M L R. 4 (Cr.)

—S. 244—Examination of witnesses—Magistrate's duty.

In summons cases the parties have an undoubted right to produce such witnesses as they choose and it is the duty of the Magistrate to examine them unless he considers that they have been produced to defeat the end of justice. If, however, a witness is not present at the hearing adjournment may not be granted for the purpose of producing him. Further, the aforesaid liberty to the complainant to be confined only to such witnesses as he actually produces in Court and if a witness refuses to

is in the discrete
summons and the
on him to do so.
MUKANPAS

1939 M L R. 61 (Cr.)

—S 253—Order of discharge—Power of Magistrate to set aside his order.

An order discharging the accused under S 253, Cr. P. Code, is in the nature of a judgment. A Magistrate therefore is not competent to set aside or alter such an order. (*Nawal Kishore, C. J.* and *Ranjitmal and Sukhdonaram, J.*) BHAROODAS v. NASIBI

1939 M L R. 21 (Cr.)

—S 259—Dismissal of complaint for default—Power of Magistrate to set aside his order.

An order dismissing a complaint for default of appearance of the complainant does not touch the merits of the case and therefore cannot be said to be a judgment within the meaning of S 369, Cr. P. Code. Consequently it is not necessary that such an order must be set aside by a superior Court and the Magistrate, who dismissed the complaint can himself alter his previous

at Kishore,
BHAKOO
21 (Cr.)
S 288—

MARWAR CR. P. CODE, S 439

An application under S. 288, Cr. P. Code, should be filed when the witness is making a statement in the Sessions Court, and has departed from his previous statement. Omission to file the application at this stage

HAMEPRA. 1939 M L R. 78 (Cr.)

—S 288—Statement of witness before Committing Magistrate—When can be put in evidence against accused

Statement of a witness before the Committing Magistrate

ever, not necessary to read over to him his entire statement intended to
e (*Nawal*
SARKAR v.
78 (Cr.)

—S 434—Non examination of accused after further cross examination of P. W. S.—If vitiates trial.

If no new matter against the accused has been brought out in the course of further cross examination and re-examination of prosecution witnesses and the accused has not thereby been prejudiced, the omission to examine the accused again does not vitiate the trial (*Ranjitmal and Sukhdonaram, J.*) UDEYCHAND v. BARNHOPA.

1939 M L R. 72 (Cr.)

—S 369—'Judgment'—Meaning of.

A judgment is a decision which affects the merits of the question involved in the case. This definition includes final orders which are passed on the facts of a case and are supported by reasons. 22 Bom 949 Foll. (*Nawal Kishore C. J.* and *Ranjitmal and Sukhdonaram, J.*) BHAROODAS v. NASIBI 1939 M L R. 21 (Cr.)

—S 435—Scope of—Executive orders passed by Magistrate—Revision.

The phrase 'any proceedings' in S 435, Cr. P. Code, followed as it is by the phrase 'before any inferior Criminal Court' means and includes judicial proceedings only. Consequently no revision would lie under this section to a superior Court from an order passed by the Magistrate on the executive side (*Nawal Kishore, C. J.*) SARKAR v. BHANWARSINGH

1939 M L R. 56 (Cr.)

—S 439—Enhancement of sentence—Accused's right to question his conviction

On a revision for enhancement the accused is fully entitled to have the question of his guilt gone into (*Nawal Kishore, C. J.* and *Ranjitmal J.*) SARKAR v. NABIA

1939 M L R. 46 (Cr.)

—S 439—Enhancement of sentence—Practice

This Court does not generally interfere in revision to enhance the sentence when the convicted person has undergone the full term of imprisonment or has paid the fine imposed upon him even though the order of the Court below is clearly wrong in law. But where the sentence awarded by the trial Court is manifestly inadequate it is competent to the Chief Court to impose an additional punishment even though the accused has served out the whole of the imprisonment inflicted by the trial Court (*Nawal Kishore C. J.* and *Sukhdonaram, J.*) SARKAR v. PEERDASINGH

1939 M L R. 66 (Cr.)

—S. 439—Enhancement of sentence—Practice

The Chief Court generally does not interfere in revision in cases where the effect of the enhancement would

MARWAR OR P CODE, S 439

involve the imprisonment of persons already discharged from jail but the test in each case is whether tence inflicted by the Chief Court involves punishment. The Chief Court will not impose adequate punishment has been inflicted but tence is manifestly inadequate it is competent to the Chief Court to impose an additional punishment even though the accused had served out the whole of the imprisonment inflicted by the lower Court (*Nawal Kishore, C J and Ranjitmal, J*) SARKAR v NABIA 1939 M L R 46 (Crl)

—S 439—Filing of revision—Time limit

There is no time limit for the filing of a revision, but undoubtedly it is well established that it should be filed with promptitude and in any case within reasonable time after the order complained of was passed (*Nawal Kishore, C J*) MST UDA v BHOOPSINGH 1939 M L R 35 (Crl)

—S 489—Petition by wife—Magistrate's duty to hold enquiry

Where the wife stated in the petition that her husband

without first issuing the process to the other party and holding an inquiry (*Nawal Kishore, C J*) MST CHHOTA v PARASRAM 1939 M L R 48 (Crl)

—S 503—Discretion of Magistrate

circumstances of the case would therefore, a witness on account of illity, cannot attend the Magistrate serious inconvenience and the Magistrate would be exercising his power if he issues a commission (*Ranjit v SARKAR*)

—S 514—Bond in favour of Magistrate to forfeit

Certain stolen property was entrusted by the police to

the bond

Held, that as the bond was not in favour of the police and not in favour of the accused was not competent to forfeit (*GUMANSINGH v SARKAR*)

—S 523—Questions of title—Power of Criminal Court

A Criminal Court cannot decide questions of titles and is confined to questions of possessions only (*Nawal Kishore, C J*) MT KISHINI v MUTHRAI 1939 M L R 55 (Crl)

—S 540—Discretion under—When may be exercised

—S. 540—Duty of Magistrate,

MARWAR INSOLVENCY ACT, S 24

If the Magistrate thinks that certain evidence is neces

merely because the complainant chooses to suggest the witness but if he himself thinks that the evidence of the witness is essential he is not only allowed to examine him but is by law bound to do so (*Nawal Kishore C J*) GUDAR v IDAN 1939 M L R 49 (Crl)

—S 514—Prosecution witnesses recalled for further cross-examination—Expenses, by whom to be borne

In a warrant case filed by the Sarkar the expenses of the prosecution witnesses recalled for further cross examination should always be paid by the Sarkar. In a warrant case instituted upon a complaint by a private person the complainant should, in the first instance, be called upon to pay the expenses of his witnesses recalled for further cross examination as hereto before but if he is to the satisfaction of the Court, in such straitened

or be unable to pay the expenses over may exercise the discretion conferred by M C P Code and order pay expenses on the part of the Government power however should be exercised judicial principles (*Nawal Kishore and Sukhdeonaram J*) NENA 1939 M L R 10 (Crl)

MARWAR EVIDENCE ACT, S 47—Has handwriting

—Witness stating he was acquainted with handwriting

—Evidence whether admissible

If in examination in chief a witness states that he is

quantity of liquor in his possession did not exceed this limit and that the same had been lawfully obtained, lies on the accused (*Ranjitmal and Sukhdeonaram J*) 1939 M L R 53 (Crl)

8—Public place—

1939 M L R 16 (Crl)

MARWAR INSOLVENCY ACT S 19 (2)—

Notice to creditors—Failure to serve on all—Effect

According to S 19 (2) Insolvency Act notice of the order fixing a date for hearing the petition should be given to all the creditors and there is no reason why the Insolvency Court should not comply with the provisions of this section. In certain cases however, where the debt has been service of the notice

lead to a failure of the

(*KAWALDAS v*)

1939 M L R 77 (Crl)

of debt—Enquiry

into whether to be made

MAR. JAGIRDARS' ADOPTION RULE No. 11.

Under S. 24 (1) (a) of the Marwar Insolvency Act, the Court should not and need not go elaborately into the validity, genuineness or otherwise of the debt. So long as there is a *prima facie* proof that a certain debt is due and that the debtor is unable to pay it, it should be sufficient to satisfy the Court. (*Nawal Kishore, C.J.*) KEWALDAS & KUMBHA.

1939 M.L.R. 77.

MARWAR JAGIRDARS' ADOPTION

No 11—Scope of.

Jagirdars' Adoption Rule No. 11 is applicable only

rain, J.) BHERONDON v. KHETDAN

1939 M.L.R. 95 (Civ.).

MARWAR JAGIRDARS ENCUMBERED ESTATES ACT (1922), S 8 (1)—Non compliance with—Effect of.

According to S. 8 (1) of the Jagirdars' Estates Act it is the imperative duty of the Court to cause a notice to be published in the Gazette. When notice was published only in two copies in the Gazette it cannot be said to have been published within the meaning of S. 8 (1). The consequences mentioned in S. 9 (1) do not follow. (*Nawal Kishore, C.J.* and *Sukhdonarain, J.*) MODHSINGH v. DALICHAND 1939 M.L.R. 142 (Civ.)

—S 9 (1)—Power of Court to transfer file to District Court.

and *Sukhdonarain, J.*) MODHSINGH v. DALICHAND 1939 M.L.R. 142 (Civ.)

MARWAR LEGAL PRACTITIONERS' ACT, S. 13—Action under, on mere suspicion—Legality.

Disciplinary action under the Legal Practitioners' Act cannot be taken on mere suspicion or innuendo. (*Sukhdonarain, J.*) UMAIDA

—S 27—Plea

more than allowed

According to S.

Act the fee payable

adversary's advocate or vakil shall be as given in Sch. III, and even if a litigant chooses to pay a larger amount to his Counsel it is not open to him to recover the entire amount from the Counsel. (*Nawal Kishore, C.J.*) GORDHANDA

MARWAR LIMITATION

empty.

S. 3 of the Limitation Act is peremptory and should be given effect to even though not referred to in the pleadings. (*Ranjitmal, J.*) MOTILAL v. PEER-SINGH. 1939 M.L.R. 178 (Civ.)

—S 3—New plea of limitation—When can be entertained in second appeal

A plea of limitation which has not been taken in either of the Courts below would of course not be entertained for the first time in second appeal where such entertainment would involve the taking of additional

MARWAR LIMITATION ACT, Art. 49.

evidence. But the Chief Court will allow it to be argued where the facts necessary to determine the question are admitted or are apparent on the face of the pleadings and the whole case is properly placed before the Court. (*Nawal Kishore, C.J.*) GABROO v. ANWARULHAQ. 1939 M.L.R. 175 (Civ.).

last date of but left the litigant was being sent away with a direction that he should file his

ld not constitute a valid ground for (*Nawal Kishore, C.J.*) GABROO 1939 M.L.R. 175 (Civ.).

—S. 20—Admission of part payment—If to be specific and unequivocal.

For the purposes of S. 20, Limitation Act, an admission of a part payment must be specific and unequivocal. Thus where the fact of the part payment was recited in a com-

1939 M.L.R. 126 (Civ.).

e the o the now ng of C.

(Civ.).

—S 20—Part payment of principal—Part payment made prior to new Act—Law applicable

The defendant executed a bond in favour of the plaintiff in Sam. 1969 and made a part payment of the amount in Sam. 1971 within the period of limitation.

1939 M.L.R. 119 (Civ.).

—Art 29—Applicability

—Art 49—Surety refusing to return property—Suit for damages—Limitation

Where a surety to whom attached movable property has been entrusted by the Court fails to return the same when asked for, a suit for compensation against him will be governed by Art. 49, Limitation Act, and time begins to run when his possession becomes wrongful. (*Ranjitmal, J.*) GOMA v. VEERA. 1939 M.L.R. 217 (Civ.)

MARWAR LIMITATION ACT, Art. 64

—Art 64—Account stated—Essence of—Mutual accounts—If contemplated

The essence of the account stated is not the character of the item on one side or the other but the fact that there are cross items of account and that the parties mutually agree to the several amounts of each and by treating the items so agreed on the one side as discharging the items on the other *pro tanto*, go on to agree that the balance only is payable. There are mutual promises the one side agreeing to accept the amount of the balance of the debt as true and to pay it the other side agreeing that it has been discharged to such and such an extent, so that there will be complete satisfaction on payment of the agreed balance. Thus there can be account stated although the balance of indebtedness is not throughout in favour of one side. It is immaterial whether the only payments made on the other side were payments in reduction of such indebtedness. All that is required is that the various items be ascertained and agreed on each side before can be struck and settled (*Nawal Kishore*)

RAMBHAIAN v SHANKARLAL

1939 M L R 181 (Civ)

—Art 64—Account stated—Requisites of

The account stated is an account which contains entries of both sides, and in which the parties who have stated account between them have agreed that the items of one side should be set off against the items of other side and the balance only should be paid. The items on the smaller side are set off and deemed to be paid by the items on the larger side and there is a promise for good consideration to pay the balance arising from the fact that items have been so set off and paid in the way described (*Ranjitmal*)

DAS GANESHA v BHAGWAN

1939 M L R 179 (Civ)

—Art 64—Account stated—Requisites of—Money

—Art 64—Account stated—Requisites of—Money

—Art 64—Account stated—Requisites of—Money

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MARWAR PENAL CODE, S 302

a nullity (*Nawal Kishore, C J*) JUGRAJ : I AXMI CHAND 1939 M L R 205 (Civ)

MARWAR NOTIFICATION NO 3847 F P 1
STAMP DATED 30TH MARCH 1932—Whether retrospective

There is nothing in the Notification of 1932 to indicate that it affected documents that came into existence before that Notification was published or that it effected vested right in existence on the date of its promulgation DAULATMAL : HARISINCH

1939 M L R 9 (IK)

MARWAR PENAL CODE S 75—Powers of Magistrate

Under S 75 a Magistrate is entitled to take into account the previous convictions of the accused for the purpose of awarding enhanced punishment in certain cases, but he is not competent to award a separate and fine and r this

Sukhtonarain

1939 M L R 63 (Civ)

—S 174—Intentional absence—Burden of proof

According to S 174 M P Code conviction cannot be had unless the person who is legally bound to attend a Court in obedience to the summons intentionally omits to do so. The burden of proving the intentional non attendance is on the prosecution (*Nawal Kishore, C J* and Sukhtonarain) BIRDA : SARKAR

1939 M L R 42 (Civ)

—S 182—Enquiry under—Legality—Prior investigation of accused's case—If necessary

There is no provision in law that before a Magistrate can enquire under S 182, M P Code, on the complaint of a police officer the accused person must have an opportunity of proving his case. Such a provision is unnecessary, for it is perfectly clear that the accused

of discretion and
id Sukhtonarain,

1939 M L R 39 (Civ)

—Ss 302 and 304—Proof of offence—Two accused—No evidence as to who actually committed offence—Both armed with lathis and both disposing the corpse and afterwards absconding and seen together

Where two accused are charged under S 302 M P Code, and there is no evidence to show which of them

absence of any evidence to show that he instigated the murder or conspired therein. The accused were last seen with the deceased who was lying with his face down and the accused standing near him with lathis in hand both of them afterwards absconding and moving to

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1939 M L R 82 (Civ)

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1939 M L R 82 (Civ)

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1939 M L R 82 (Civ)

1939 M L R 82 (Civ)

MASTER AND SERVANT

temple in their discretion the managers can dispense with the services of the pujari without hearing the pujari and without giving reasons for doing so. The pujari cannot complain that he has not been heard or misconduct has not been proved to the satisfaction of the Court. The managers may have good reason for their action and yet not be able to call witnesses or prove their case. They must however act fairly and honestly and not corruptly in the exercise of their discretion. (*Davis, J C and Weston, J*) **PREMCHAND V WAWA COMMUNITY, KARACHI** I.L.R. (1939) Kar 580 = 184 I.C. 643 = A.I.R. 1939 Sind 251

—Wrongful dismissal—Railway company—Misappropriation by assistant goods clerk—Prosecution of station master and assistant goods clerk and another for criminal breach of trust and conspiracy—Conviction—Dismissal of station master—Subsequent acquittal in revision—Suit for damages for wrongful dismissal—Maintainability

The respondent was a station master in the employ of the appellant Railway Administration, and during that time it was discovered that the assistant goods clerk had misappropriated monies collected by him in respect of freight charges amounting to Rs 15,000 of a complaint to the police the respondent and another employee of the appellant railway were prosecuted under 120 B, I.P. Code, for criminal breach of trust and conspiracy and convicted and as the conviction the appellant company dismissed the respondent.

Court allowed the application and set aside the conviction and sentence of the respondent. The respondent filed a suit against the appellant company for damages for wrongful dismissal and contended that the company was not entitled to dismiss him by reason of the conviction.

might from time to time be issued by any person duly placed in any authority over him, and that the respondent understood that the authority which appointed him had the power, for any reason that might to him appear sufficient, to dismiss the respondent. The rules framed by the company provided for dismissal of an employee (1) in case of conviction by a Criminal Court, (2) for serious misconduct and (3) for neglect of duty resulting in or likely to result in loss to Government or to the Railway Administration or danger to the lives of persons using the railway. One of the rules

judicial notice

Held, that the dismissal based on the criminal conviction must be taken to be based on the findings of the Court and no departmental inquiry was needed and the

aside at some later date. The dismissal could not therefore be said to be wrongful so as to make the company liable for damages. (*Leach, C.J. and Kunhi Ramon,*

MINOR

J) MADRAS AND SOUTHERN MAHARATTA RY CO, LTD v RANGA RAO 50 L.W. 833 = (1939) 2 M.L.J. 911

MAXIMS—*Actio personalis moritur cum persona*—Applicability—Limits

The maxim, *actio personalis moritur cum persona* cannot operate when the suit has ended in a decree for damages so as to result in the abatement of the appeal by the legal representative of the dead person. (*Niyogi J*) **HARIDAS NARAYANDAS v JAGANNATH** 184 I.C. 579 = 12 R.N. 115 = 1939 N.L.J. 338 = A.I.R. 1939 Nag 256

—*Actio personalis moritur cum persona*—Applicability See C.P. CODE O 22 R 1 41 P.L.R. 610 = A.I.R. 1939 Lah 492

—“*Falsa demonstratio non nocet cum de corpore constat*” See DEED—CONSTRUCTION A.I.R. 1939 Rang 396

—*Qui facit per alium facit per se*—Applicability See C.P. CODE O 3, R 4 1939 Rang L.R. 108 = A.I.R. 1939 Rang 1

—*Sic utere tuo ut non laedas*—Applicability See INJUNCTION—GRANT OF (1939) 1 M.T. 299

titles in que non earner, later manufacture and NGH v EMPEROR 1939 N.L.J. 55

MERCHANT SHIPPING ACT (XXI OF 1923) S 63—Orders under—Revision—Jurisdiction of High Court

The language used by the Legislature in S 63 of the Act is to the effect that the order made by the Magistrate in the exercise of his jurisdiction of the High Court shall be final and conclusive. (*Fazul*) 43 C.W.N. 612

—MINORS

(2) MAHOMUDAN LAW—MINORS (3) GUARDIAN AND WARD'S ACT

Alienation by guardian

Competence to execute vakalat in criminal case

Compromise decree

Contract by guardian

Creditor advancing money for necessities

Debt by guardian

Decree against

Duty of Court

Guardian—Contract of loan

Guardian de facto

Liability

Partition suit

Proof of age

—Alienation by guardian—Right to set aside—Same property sold to another by minor after attaining majority—Right of purchaser—Transfer of Property Act S 66(a)

by the natural person when the sale is not void but set aside. The

minor on attaining majority has the right to have the sale set aside. The mere fact that the minor after attaining majority has chosen to ignore the sale by his

MINOR.

guardian and to sell the same property to another person cannot have the effect of setting aside the sale. All the interest which the minor possesses in the property after the sale by his guardian is a mere right to sue to have the sale set aside, and the transfer of such a right is clearly prohibited by S 6(e) of the Transfer of Property Act. The purchaser from the minor, therefore, gets nothing. (*Sew. J.*) **MON MOHAN BHATTAR**

44 Mys H C R. 119

—Compromise decree—Provision for payment direct to next friend of
C. P. CODE, O 32, R

—Contract by minor—Liability of e for necessaries. See (

—Contract by tract of sale of minor

There is a distinct tract of sale of minor's property. If the property is already alienated, the Court is required only to find whether the alienation is binding on the minor or not. In such a case no consideration of equity arises. The relief of specific performance is a relief in equity and the question which the Court is faced with is whether it should compel the minor to perform the onerous act of alienating his property in consequence of the contractual obligation incurred by his guardian (*Niyogi, J.*) **KRISHNA CHANDRA SHARMA v SETH RISHABHA KUMAR.** A I R 1939

—Contract of sale by guardian on behalf of minor—Forceability against minor—Purchaser's remedy

A guardian's contract for sale or purchase on behalf of the minor is not enforceable by or against the minor. The reason is that a contract for sale of immovable property is a contract of purely personal nature and as no personal liability can be imposed on the minor, the minor cannot be compelled to perform the contract, for the same reason he cannot take advantage of the contract and ask for specific performance. There is another aspect to the question. In every case when

MINOR

debts proved to have been incurred for his benefit or a purpose binding on him, even if the promissory note does not disclose that the borrowing was on behalf of the minor (*Abdur Rahman, J.*) **PICHANUIHU UDAYAN v. APPAVU UDAYAN.** 80 L W 374—1939 M W N. 909.

—Decree against—Gross negligence of guardian—Suit to set aside decree—Maintainability in the

collusion, on the part of the minor litigant and a decree

ANA NAMDEO

v. DALPAT SUPADU

41 Bom L R. 1208

—Decree against—Selling and—Gross negligence

—Duty of Court—Next friend or guardian ad litem failing in duty—Proper course for Court

Where a Court finds that a next friend or guardian ad litem of a minor party to a suit does not do his duty in relation to the suit, it is its duty not to permit him to prejudice the interests of the minor, but to adjourn the suit in order that some one interested in the minor may apply on behalf of the minor for the removal of the next friend or Court guardian and for the appointment of a new next friend or guardian ad litem

—Guardian—Contract of loan—Liability of minor—Creditor's right of direct recourse against estate of minor

There is no rule of law which gives the guardian of a minor in India any authority to bind the infant ward by a personal contract. Where a lender of money deals with the guardian on his or her personal capacity and not footing only, the remedy available against the guardian and the guardian available against the minor or the creditor has is merely an

MINOR

gation but not a decree enforceable against the minor's estate by process of execution (*Pandrang Rowani Krishnarwami Appangar, Jf*) MARGARET LORNE v ABU BACKER SAIT 184 I O 735 = 1939 M W N 555 = 49 L W 207 =

A I R 1939 Mad 414 = (1939) 1 M L J 664
Guardian de facto—Power to renew barred debts
See CONTRACT ACT, S 25 (3) 41 Bom L R 896
Liability of—Debt binding under personal law not charged on estate

A minor's estate is liable for a debt which is on him under his personal law, even though may not have been expressly charged on the estate (*Niyogi, J*)
183 I C

Partitio

Minor defen

leave of Court—Effect—Right of minor to avoid—

Age—Burden of proof—Boy described in deed as being seven years old—Meaning of

When a person against whom a mortgage deed is sought to be enforced pleads that he was a minor when he executed it, the onus undoubtedly rests on him to prove that he had not attained majority on the date of the document. When a boy is described in a document as being aged seven years it cannot be taken for granted that he has completed seven years. It is often the practice in India to give a man's age not with reference to the completed year but with reference to the year that is actually running (*Varadachariar and Pandrang Row Jf*) AHMED IBRAHIM CHETTIAR

CHETTIAR

MIRZAPUR STONE MAH

Appeal or revision—Forum—

Collector—High Court, if can issue are on reference

It would be seen from S 18 of the Mirzapur Stone Mahal Act that the appeals and revisions from the decisions and orders passed under the Act by an Assistant Collector have to be made Commissioner or the Local Government. The High Court has no jurisdiction such orders on a reference (*Thom, J*) EMPEROR v JHARIHAG

183 I O 421 = 12 R A 131 = 190

40 Cr L J 777 = 10

1839 A W R (H C) 399 = A I R

MORTGAGE See also G P ACT SS 58 to 104 AND C P CODE, O 34

Accession of mortgaged property

Appportionment

Co mortgagors

Consideration proceeding from different sources

Construction

Equitable mortgage

Interest—If a charge

Mortgages—Assignees from

Mortgage by deposit of title deeds

Mortgage suit

Moveable property

Prior and subsequent mortgage

Redemption

Rights of mortgagee

Rights of mortgagor

Sale by mortgagor

Splitting up of

Sub mortgage

MORTGAGE

Subrogation

Successive mortgages

Usufructuary mortgage

Validity

Accession to mortgaged property—Non transferable holding—Tenant recorded as tenant at will or licensee—Mortgagee buying out tenant—If entitled to compensation from landlord for 'accession'

the occupant as a licensee who claims and thereby

5 B R 320 = A I R 1939 Pat 358

not having title

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has not the title to

an apportionment

of the mortgage debt cannot be ordered (*D R Norman*) ALE RASUL ALI KHAN v BAL KISHAN

1939 A M L J 61

Co mortgagors—Transfer by some of entire

equity of redemption to mortgagee—Position of mort

gagee—Suit by the other co mortgagors—Nature—

Limitation—Limitation Act Art 148

Where there are several co mortgagors and the entire

equity of redemption in the mortgage is transferred to

the mortgagee by some only of the co mortgagors, the

possession of the mortgagee continues to be that of a

mortgagee so far as the other co mortgagors are concern

1939 A W R (C C) 304 = 1939 O L R 699

Consideration proceeding from different sources—

Consolidated sum saddled on entire estate—Mortgage of

Construction—Deposit of title deeds of mofussil

properties—Calcutta properties subsequently mortgaged

as additional security—Effect of—Jurisdiction of Cal

cutta Court

In 1931 the mortgagors deposited the title deeds of

certain mofussil properties with the plaintiff to secure re-

payment of a certain sum. In 1934, the plaintiff

advanced a further sum the repayment of which was

secured by mortgage of certain Calcutta properties and

also by a further charge on the mofussil properties. The

deed provided 'that in consideration of the premises

and as additional security for payment of all monies

owing and payable by the mortgagors unto the mortgagee

under the memorandum of agreement of deposit of title

deeds of 1931, the mortgagors do charge and assure unto

the mortgagee all the Calcutta properties"

Held, that the effect of the second document was to

alter the character of the transaction of 1931 by chang-

ing it from a hypothecation of mofussil properties only

into a hypothecation of mofussil properties and Calcutta

properties, and that, therefore, the plaintiff could enforce

MORTGAGE

his rights under the mortgage in a Calcutta. (*Panchridge, J*) *PROMAT KANAENDRA NATH TAGORE.*

I L R. (11)

—*Construction—Independent cover that after duration period mortgagee to possession or recover mortgage-money in*

Where a mortgage has provided that was for the duration of certain period: end of this period, the mortgagee could possession or recover the mortgage-money with interest at the rate agreed upon, the mortgagee's failure, in a suit for possession, to claim the relief for the recovery of the money due on the mortgage does not preclude him from seeking that relief in subsequent suit. Because the right of the mortgagee to enter into possession and at his option convert a simple mortgage into a usufructuary mortgage is entirely apart from the right to demand payment by realization of the security and therefore an independent covenant. (*Atison and Ram Lall, J.J.*)

HAR KAUUR V. UDHAM SINGH. 183 I C. 745 = 12 E L 135 = A I R 1939 Lah 110

—*Equitable mortgage—Suit receiver in respect of profits of money decree-holder also obtains receiver in execution—Preferential*

An equitable mortgagee is entitled mortgagee to the rents and profits security if it is insufficient for the debt mortgage debt and is entitled to the receiver in respect of the rents and profits mortgaged property. The holder of a money decree who obtains the appointment of a receiver in execution is not in the position of a secured creditor. When there is a contest between the equitable mortgagee and the money decree holder, the former has entitled to preferential rights in the mortgaged properties when appointed at the instance of the money decree-holder in execution and also appointed to act in a suit instituted by the mortgagee to enforce his mortgage. (*Leach, C.J. and Mithavan Nair, J.*) KHADER MOHIDEEN SAHIB V. NAGU BAI

I L R. (1939) Mad 496 = 49 L W 120 = 1939 M W N 138 =

A I R 1939 Mad 402 = (1939) 1 M L J 730

—*Improvements by mortgagee—Rights as to*

A mortgagee is entitled to claim amount due (Norman)

—*Interest—If a charge.*

In the absence of any contract to the contrary, a mortgagee is entitled to interest. (*Adinath Narayan, J.*)

—*Mortgagee—Assignees from—If joint promisees—Realisation by one of his share of mortgage debt—If*

Where the parties professing to create a mortgage by deposit of title deeds, contemporaneously enter into a contract that the mortgagee shall not be entitled to

MORTGAGE.

—*Mortgage suit—Costs—Award of costs against subsequent alienee of mortgaged property personally—When justified—Grounds for award*

The fact that an alienee of mortgaged property fails to comply with a notice of demand for mortgage-money is not a reason recognised by law for awarding costs against him in a suit to enforce the mortgage. Though the Court has jurisdiction in a mortgage suit to award costs personally against a subsequent encumbrancer or subsequent purchaser, he cannot be made personally liable for costs, unless the suit has been necessitated by

properly incurred in enforcing his mortgage. But where the mortgage has never been acted upon, and the mortgagee when called upon before suit to produce the mortgage deed, fails to do so, the mortgagee is entitled to costs.

incurred by the mortgagee. (*Beaumont, C.J. and Wadia, J.*) BAI SHEVANTIBAI V. JANARDAN WARICK

184 I C 23 = 12 E L 135 = 41 Bom L R 631 = A I R. 1939 Bom 322

—*Mortgage suit—Costs—Subsequent purchaser's appeal—Costs with reference to—If to be recovered from the mortgagee's property.*

Though the ordinary rule is that the costs in a mortgage suit are to be paid by the mortgagee, the court may award costs to the mortgagee if the mortgagee has been misled by the subsequent purchaser.

J J SETH DEVIKISHAN V. K. S. SETH CHAMPALALSA. 1939 N L J 512.

—*Mortgage suit—Final decree for sale in suit for redemption—If puts an end to mortgage—Mortgagee, if still subsists after such decree See LIMITATION ACT, ART 116*

—*Movable property—Right of mortgagee*

A mortgage of movable property can be created by deposit of title deeds. (*North Eastern Ry. Co., J.*)

—*Prior and subsequent—Prior mortgagee's purchase—Subsequent mortgagee's purchase—Suit for recovery of costs—If mortgagee's purchase is prior to subsequent mortgagee's purchase*

MORTGAGE

First mortgagee without impleading the second mortgagee brought a suit on his mortgage and purchased the property in execution of a decree obtained by him. In a suit brought by the second mortgagee for redemption of the first mortgagee,

Held, that the first mortgagee should be made to account for the rents and profits of the property from the date on which he went into possession (*Sen, J*)

HARE KRISHNA v GOJENDRA NATH

ILR (1938) 2 Cal 613=183 IC 612=
12 RC 169=AIR 1939 Cal 15

—Prior and subsequent—Suits by each mortgagee without impleading the other—Rights of parties

Where a prior mortgagee brings the property execution of a decree on his mortgage without impleading the puisne mortgagee to the suit, the right

can claim payment of the amount due under the prior mortgage decree where the puisne mortgagee seeks a decree for

J) MOTIF

—Prior and subsequent—Suit on first mortgage without impleading second mortgagee—Decree and sale—Purchase by mortgagee decree holder and delivery of possession—Suit by second mortgagee—Prior mortgagee impleaded but remaining *ex parte*—Decree—Sale and purchase by second mortgagee decree holder—Delivery of possession to latter—Suit for possession by dispossessed first mortgagee purchaser—Maintainability See MYSORE C P CODE, S 11

17 Mys LJ 487

—Redemption—A count payable—Suit for re

under the fir
KRISHNA v

—Reder

mortgagee is,
ing not cash but paddy advanced

A mortgage was to secure a loan not of money but of certain amount of paddy advanced. The mortgagee had paid the price of the paddy at a particular rate. It

prevailing

Held, that the second mortgagee trying to redeem the prior mortgage must calculate the price of paddy due

payments

Where cash is paid in satisfaction of a mortgage, redemption takes place in fact, but where property is transferred the redemption depends upon whether, the title in the property sold, in law has passed to the mortgagee or not (*Thomas, C.J and Radha Krishna, J*)

MORTGAGE

KISHN GOPAL v ABDUL LATIF KHAN

1939 A WR (CC) 304=1939 OLR 699=
1939 OWN 1015

—Redemption—Right of co mortgagees—Shares of some mortgagees purchased by mortgagee in execution of money decree against them—Right of others to redeem those shares

Where the mortgagee brings a suit omitting a necessary party and obtains a decree and purchases the mortgaged property in execution thereof the mortgage decree and the execution sale are of no effect as against the person who is not impleaded in the mortgage suit and he is entitled to treat the entire mortgage as subsisting and

11 THE MORTGAGEE CANNOT
against some of the mort-
equity of redemption
tinguished, and the re-
demption of those shares cannot be claimed by the other
mortgagees who are not parties to the decree or the ex-
ecution proceedings and whose interests therefore, are
not affected by the execution sale (*Rowland and
Chatterji, JJ*) WAJID ALI v ALIDAD KHAN

184 IC 124=12 RP 222=6 BE 19

—Redemption—Right of—Mortgage of tenure—Mortgagee in possession covenanting to pay rent of tenure—Default in payment of rent—Sale of holding in execution of rent decree—Effect on equity of redemption—Subsequent purchase by mortgagee—If reverts equity of redemption—Absence of fraud or collusion—Effect

Where a mortgagee in possession of a tenure makes default in payment of rent which he has under taken to pay, in consequence of which the holding is brought to sale by the landlord in execution of a rent decree, such sale must be held to extinguish the mort-

12 RP 132=1939 PWN 16=
AIR 1939 Pat 392

—Redemption suit—Attaching decree holder pur-
—Suit for redemption after
tion of mortgage decree—

in execution of his money
decree attaches the mortgage property of his judgment
debtor and at auction sale purchases the same subject to
mortgage but does not redeem
of redemption as purchaser is
of the mortgage property in
decree and his suit for redemp-
tion sale is wholly untenable

Pat 7
—Rights of mortgagee—Impairing of security by
act of third parties—Remedy—Limitation

A mortgagee is not restricted to remedies against the mortgagor when he sees that his security is lessened or

MORTGAGE.

destroyed by the act of third parties. He is not required to wait from the time the injury is done to the security until he obtains possession through legal proceedings. The starting point of limitation for his suit for is the date of the injury to the security. (*Stone v. NILKANTH v. DEVIDAS*, 1939 N.L.

—*Right of mortgagee—Right to relinquish and sue on personal covenant.*

As a general principle the mortgagee can sue on the security, and can sue on the pay. (*Almond, J. C. and S. BASHESWAR NATH*, 183 I.C. 833=12 B. Pesh. 18=A.I.R. 1939 Pesh. 34)

—*Rights of mortgagee—Mortgagee contracting to sell in exercise of his power of sale—Contract rescinded—Mortgagee's liability to account to mortgagor for purchase-money.*

—*Sale by mortgagor—Purchaser not impeded in suit on mortgage—Decree and sale in execution—Rights of private purchaser—If affected—Rights of assignee against execution purchaser. See MYS. C. P. CODE, O. 34, R. 1.* 17 Mys. L.J. 321

—*Splitting up of—Ways open*

There are only three ways in which a mortgage can be split up. One is by act of parties at the time of the contract. The second is by operation of law and in India it can arise only under S. 60 of the T. P. Act where the mortgagor or all the mortgagees as the case may be acquire in whole or in part the share of the mortgagor. The third is by act of parties subsequent to the deed by way of novation which is dealt with in S. 67(d) of the T. P. Act. It requires as a pre-requisite the consent of all parties concerned. (*Stone, C. J. and Bose, J.*) *SADASHIV RAO v. ROOP CHAND* 184 I.C. 719=1939 N.L.J. 142=A.I.R. 1939 Nag. 136

—*Sub mortgage—Position of—Compromise decree fixing 'state of account' between mortgagor and mortgagee—If binds sub mortgagee*

The position of a sub mortgagee is no higher than that of the mortgagee. He is bound by what is called the 'state of accounts' between the mortgagor and the mortgagee. Though a decree fixing the 'state of account' between the mortgagor and the mortgagee is a decree binding on the mortgagor, it is not binding on the sub mortgagee. (*J.*)

1921= A.I.R. 1939 All. 719

—*Subrogation—Keeping alive—Money advanced to discharge three mortgages—Payment of two only—If available as shield against third*

If a person advances money to discharge three encumbrances, payment of two prior encumbrances cannot be availed of by him as a shield against the third. (*Venkataramana Rao, J.*) *SUBBARAMA REDDI v. KRISHNIAH CHETTY*

1939 M.W.N. 635=A.I.R. 1939 Mad. 718=

MORTGAGE.

The right of subrogation cannot be urged in defence at a time when the mortgage which had been discharged is itself barred by limitation. If, a suit on the

REDDIAR. 49 L.W. 657=1939 M.W.N. 690=A.I.R. 1939 Mad. 678=(1939) 1 M.L.J. 770.

—*Subrogation—Nature of right—How far an assignment or substitution*

Subrogation, of course, means substitution, for the person redeeming is substituted for the incumbrancer

—*Subrogation—Purchase free from incumbrance—Disclosure of prior mortgage—Discharge—Rights of purchaser*

Where land burdened with prior and subsequent mortgages is purchased by a person for full price and

J.) *SUNDERRAL v. AMRUT RAO*, I.L.R. (1939) Nag. 690=183 I.C. 439=12 R.N. 62=1939 N.L.J. 366=A.I.R. 1939 Nag. 217.

—*Subrogation—Third mortgagee paying off first mortgage—Ignorance of intermediate mortgage—Effect*

—*Pretension of intention to keep alive—Third mortgagee providing for different rate of interest from first and comprising more properties than first—Absence of inquiry as to amount of first mortgage—Right to priority over second mortgage*

Ignorance of the existence of an intermediate mortgage is no ground for refusing to draw in favour of a subsequent mortgagee who discharges the first encumbrance the pre-emption that he intended to act for his own benefit and keep alive the original mortgage as a shield against any danger which might threaten his

—*Successive mortgages—Two mortgages over same property to same creditor—Merger—Doctrine of*

The doctrine of merger is not applicable to mortgages,

MORTGAGE

inte

to mortgagee—Trespasser in possession—Suit by mortgagor for possession and mesne profits from trespasser—Maintainability

A mortgagor who has executed a usufructuary mort-

put in possession of property mortgaged—Power of mortgagor to create rent-free tenancy in favour of tenant

rehandar or mortgagee in possession, but even that would not bind the mortgagor unless the settlement is made bona fide in the ordinary course of management (*Manohar Lall, J*) RUP NARAIN PANDEY v SHEO SAGAR TEWARI 11 RP 451—180 IC 105=

5 BR 342=AIE 1939 Pat 258

—Usufructuary mortgagee—Rights of—Provision enabling mortgagee to realise rents of mortgaged property and to appropriate same towards mortgage money and interest and in case of difficulty in realization to sue for sale—Right to sue tenants

Where a mortgage deed in substance provides that the mortgagee will have the right to realize the rents of the mortgaged properties and apply the amount realized

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MOTOR VEHICLES ACT (1914), S 16

1939 O L R b/-1939 A W R (U C) /-
1939 O A 128=A I E 1939 Oudh 96

—Validity—Trespasser wrongfully in possession—Mortgage for payment of government revenue—If binds

See

621.

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ment concluded in 1930 with the Central Provinces States (*Niyogi J*) TULSIRAM v EMPEROR

1939 N L J 355

—S 16 and Rule 40—Disobeying signal—No evidence that police officer was in uniform—Conviction if can be sustained

Where there is no evidence to the effect that the police officer whose signal was disobeyed was in uniform a conviction under the rules for disobeying the signal cannot be sustained (*Edgley J*) NANDA LAL KHAN v EMPEROR 43 O W N 278

—S 16—Prosecutions—Promptness—Necessity

Prosecutions for motoring offences should be lodged promptly otherwise the motorist may be unable to recollect as to what happened and to give his own explanation (*D R Norman*) CHAND MAL v EMPEROR 1939 A M L J 94.

—S 16—Rules under Rr 31 and 33—'Plying for hire within British India—Meaning of

If a person carries passengers in his bus from outside

at one side terminates outside British territory

A I E 1939 Sind 85

—Validity—Basis of Motor Vehicles Act—Applies to weight—

not apply

use of a motor omnibus carrying passengers and for it applies only to motor vehicles used exclusively for the carriage of goods R 63 (3) seems to

to calculate

extra luggage

60 makes it

responsible,

fulfilment of

driver are

unless of the

—Validity—'Sahs' were

Old mortgage of 1832—Practice of so

charged for carrying luggage in

MOTOR VEHICLES ACT (1914), B. 40

—Rules framed under Rr. 40 and 23—*Prosecution for breach of—Examination of motor vehicle—Necessity—Rider if should be owner, to justify conviction.*

In respect of a motor cycle, if a breach of R. 40 of

offence to drive a motor vehicle without a silencer
(D.R. Aclman.) **CHAND MAL v. EMPEROR**
1939 A.M.L.J. 94.

MUSSALMAN WAKF ACT (XLII OF 1923), S. 10
—Jurisdiction to enquire under—Denial of existence of waqf

Where the existence of the waqf itself is in dispute,

—(as amended by Bombay Act XVIII of 1935), S. 10—Scope—Jurisdiction to try offence under
—Trial by District Court—Legality

MUSSALMAN WAKF (BOMBAY AMENDMENT) ACT (XIII OF 1935) S. 61—Jurisdiction of District Court under—Property of waqf situate beyond jurisdiction—Power to make order of contribution on mutawalli

In the case of the local limits of

under S. 61 (ent) Act of ed upon to make a contribution to that Fund are the wakfs to

The entry of a title in the revenue records as the result of mutation proceedings is merely the recognition by Revenue Officers of a title which they believe to exist. It is true that the entry when made is entitled to a presumption of correctness unless rebutted, but the mere making of an entry does not in any way create a title. (Mitchell, F. C.) **SARDAR KHAN v. LAKSHMI CHAND.**
18 Lah L.T. 31.

MYSORE ARBITRATION ACT, S. 11.

—Right to—Delivery of formal possession by Civil Court—Person in possession not a party to those proceedings.

Where a person in possession of property, who had already obtained mutation in his favour, is not a party

(M.) **VIDYA BHUSHAN v. ALI HASAN.**

1939 A.W.R. (B.R.) 89 = 1938 E.D. 944.
MUTUAL RELIEF FUND—Policy—Appointment of nominee—Vesting of fund. See C. P. CODE, S. 60
—FAILING EMPLOYEE. A.I.R. 1933 Sind 15.

MYSORE REGULATIONS, ACTS AND RULES.

Arbitration Act.
City Municipalities Act (VII of 1933).
Civil Procedure Code (III of 1911).
Co-operative Societies Act (VII of 1918).
Court Fees Act (III of 1900).
Criminal Procedure Code (II of 1918).
Hindu Women's Rights Act (X of 1933).
Inam Rules
Insolvency Act (VI of 1911).
Limitation Act (IV of 1911).
Negotiable Instruments Act (VII of 1917).
Road Traffic and Taxes Act (VI of 1935).
Stamp Act (II of 1900).
Town Municipalities Act (VIII of 1933).
Transfer of Property Act (IV of 1918).
Workmen's Compensation Act.

MYSORE ARBITRATION ACT, S. 11—Award going beyond terms of reference—Validity—Parties taking part in proceedings and accepting award and acting on it—Effect—Right to impeach award.

Where the arbitrators decide as well a matter that is not included in the reference, but the parties concerned take part in the proceedings and accept the award when it is made, and act upon it, they must be deemed to have made a second submission in respect of that matter and cannot subsequently be allowed to repudiate the award and say that the award is invalid on the ground

reference. (Abdul Ghani SHEIK MAHOOMED v. 44 Mys H.O.E. 170 = 17 Mys L.J. 132.

—S. 11—Misconduct—Arbitrator making private inquiries—Objection raised for first time at hearing of appeal from order filing award—Acceptance and signing of award after award is read out—Effect—

not open to a party to an award made on arbitration to impeach the award on the hat the arbitrator made private inquiries apart evidence adduced by the parties, when he has the award and signed it after hearing it read uch a case he must be treated as having waived to raise such an objection. Irregularities and act may be waived. An objection on this score e permitted to prevail when it is raised only at ng of the appeal against the order filing the (Abdul Ghani and Nagaraj Lax, J.J.)

SHEIK MAHOOMED v. SHEIK AHAMED
44 Mys H.C.R. 170 = 17 Mys L.J. 132.

—S. 11—Misconduct—Whole question referred including question of law governing parties—Wrong decision on law—If invalidates award

Where the whole question in dispute between the parties, including the law applicable to the parties, who are Mussalmans, is referred to the arbitrator (Manshi).

MYS CITY MUN. ACT (1933), S. 64.

his award cannot be attacked on the ground that he decided on an erroneous assumption of law. If a

Iyer, J.J.) SHEIK MAHOOMED v. SHEIK AHAMED
41 Mys H O R 170 = 17 Mys L J. 132

MYSORE CITY MUNICIPALITIES ACT (VII)

Mysore Road Traffic and Taxes Act, S. 31—Effect of

MYS C. P. CODE (1911), S. 43.

verse possession is not barred by *res judicata* (*Nageswara Iyer and Venkataranga Iyengar, J.J.*) SANJEEVA GOWDA v. VENKAPPA 44 Mys H C R. 422 = 17 Mys L J. 403

—S 11—*Might and ought—Prior mortgagee purchasing mortgaged property in sale in execution of decree on his mortgage and taking possession—Second mortgagee not made party to suit—Subsequent suit by second mortgagee—Prior mortgagee impleaded but remaining ex parte—Omission to set up right to be redeemed or to offer to redeem second mortgagee—Decree by decree-holder—Discrepancy—Suit by latter for possession—Bar of*
Where a prior mortgagee, who has purchased and

1/ Mys L J 6
MYSORE CIVIL PROCEDURE CODE (III OF 1911), S. 11—Directly and substantially in issue—Claim by wife for maintenance against husband on

a suit filed by the husband and not by the wife, the plea that he is a prior mortgagee in order to obtain possession, by reason of S. 11, C P Code, he having omitted to urge the same in the suit by the second mortgagee (*Nageswara Iyer and Singaravelu Mudaliar, GOWDA v. MARISAMI GOWDA,*

17 Mys L J. 487,

and 38—*Construction and scope—"Court decree"—Court actually passing decree—Sue after transfer of territorial jurisdiction—Court*

The Civil Procedure Code, is an inclusive does not exclude the Court which actually decree, though its territorial jurisdiction has been transferred to another Court. The Court that has power to execute it. S 37 has effect of enlarging the scope of S 38 by in the ambit of the words "Court that passes" a Court to which jurisdiction has been (*Shankaranarayana Rao and Singaravelu J.J.*) RAMA SETTY v. RAMAKRISHNA 43 Mys H C R 617.

adverse possession and title thereby—1/ res judicata.

Where in a previous suit by the defendant against the plaintiff for a declaration of his title property and for an injunction, the Court the latter and dismissed the suit, and takes a subsequent suit for possession owner and as lessor of the defendant defendant that he is the owner would *judicata*. But the decision in the first would not prevent the defendant from later suit that he and his predecessors possession of the property for over 12 has thereby acquired ownership by ad as there was no issue of adverse possession much less any finding thereon, in the former suit, the plea of ad

13—*Applicability—"Decree"—Award by Registrar of Co-operative Societies under Co-operative Province—If a "decree"*

Code, only decrees of British India can be subject to other limitations of a Registrar of Co-operative

the same manner as a decree of such Court does not invest the award with the character of a decree of a Civil

MYS C. P. CODE (1911), S 47.

or Revenue Court, and does not bring it within the scope of S. 43, Mys. C. P. Code. (*Nageswara Iyer and Singaravelu Mudaliar, jfs.*) SRI GAJANANA URBAN CO-OPERATIVE BANK, LTD., BYADAGI v. BASAVANNA GOWDA SIDDALINGANNA GOWDA, HADARA HALLI.

17 Mys L J. 436

—S. 47—Applicability—Mortgage of undivided share by Hindu coparcener—Suit on—Decree and sale in execution—Purchase by decree-holder—Procedure for working out rights—Application in execution of suit for partition. See HINDU LAW—JOINT FAMILY.

17 Mys L J 270

—S 47—Execution application—Conversion into suit—Conditions for

An execution application cannot be converted into a suit under S. 47, C. P. Code, when the allegations in the application are insufficient as pleadings in any suit which might be of advantage to the applicant, and indeed very different from the pleadings required for such a suit. (*Reilly, C J. and Abdul Ghani, j.*) RAMACHANDRA RAO v. CHAGANMULL.

17 Mys L J. 270.

—S 47—Parties—Defendants dismissed as unnecessary parties—If "parties."

Parties added as defendants to a suit, who have been dismissed from that suit as unnecessary parties cannot be regarded as parties within the meaning of S. 47, C. P. Code. (*Reilly, C J. and Abdul Ghani, j.*) RAMACHANDRA RAO v. CHAGANMULL.

17 Mys L J 270.

—S 47—Scope—Execution, discharge or satisfaction of decree—Decree holder purchaser—Proceedings for working out rights as purchaser—If relate to execution or satisfaction of decree

Proceedings taken out by a decree holder purchaser for working out his rights as auction purchaser are not proceedings for satisfaction of the decree or for the execution of that decree within the meaning of S. 47, C. P. Code. (*Reilly, C J. and Abdul Ghani, j.*) RAMACHANDRA RAO v. CHAGANMULL.

17 Mys L J. 270.

—S 60—Applicability—Personal inam grant by Government—Successive life estates with prohibition against alienation—Decree against holder—Right of decree holder to attach and sell inam. See GRANT—PERSONAL INAM BY GOVERNMENT

17 Mys L J. 305—44 Mys H C R 249

—S 60—Scope—Execution sale—Right of purchaser prior to confirmation of sale—Attachability—Transfer of Property Act—Applicability to Court sales.

The right of an auction purchaser in execution of a decree in the prop before the sale is confirmed is a ble under S. 60, C. P. gets a vested right and not mere On confirmation title to the property vests in him not from the date of confirmation but from the date of sale. The fact that the vested interest is liable to be defeated as a result of the sale being liable to be set aside under O. 21, R. 89, 90 or 91, C. P. Code, does not affect the rights of the purchaser under the sale. Sales in execution of decrees are not governed by the provisions of the Transfer of Property Act save as provided by S. 57 and Ch. IV of that Act. The rights of an auction-purchaser at an execution sale have therefore to be determined by reference to the provisions of the C. P. Code. (*Shankaranarayana Rao, Off. C. J. and Singaravelu Mudaliar, j.*) RAMANARAYAN v. VENKATAPPA.

44 Mys H C R. 40—17 Mys L J. 69

MYS. C. P. CODE (1911), S 144.

—S. 96—Decree—Finding or observation adverse to successful party not incorporated in decree—Applicability—Omission to appeal against—If concludes matter as against non appealing party.

Where a decree is in favour of party, the observations and often even findings against him not incorporated in the decree cannot be appealed from. It is the decree which gives the right of appeal to the aggrieved party, and it is not apparent how a mere observation in the judgment or even a direction which is not embodied in the decree can be challenged at all. When further the observation or direction relates to a person who has not been made a party to the suit it cannot be challenged at all. The Court has no power to take up the case of a person who is not a party to a suit and try in that suit to decide his liability or rights. Failure to appeal

—S. 100—Concurrent findings of fact—Finality—Ignoring of vital admissions of party—If justifies reopening of findings in second appeal

Though generally the High Court in second appeal will not reopen concurrent findings of fact arrived at by the lower Courts, if vital admissions by a party clinching the matter in dispute have been ignored by the Courts below, the High Court is not precluded from reopening the findings of fact notwithstanding that they are concurrent findings (*Abdul Ghani and Singaravelu Mudaliar, jfs.*) SRINIVASA IYENGAR v. TIRUNARAYAN.

44 Mys H C R 67.

—S 115—Case decided—Interlocutory orders—Revision—Interference—Power of High Court.

The High Court has power to interfere in revision at an interlocutory stage in appropriate cases, but it can do so only when the error is such that irreparable injury or injustice will result if the error remained uncorrected at the earliest possible opportunity (*Nageswara Iyer and Singaravelu Mudaliar, jfs.*) LAKSHMINAMA v. NEELARAJE URS.

44 Mys H C R 319.

—S 115—Limitation—Revision application—Period of limitation—Practice. See PRACTICE—MYSORE HIGH COURT.

17 Mys L J 267.

—S 115—Material irregularity—Revision—Order rejecting as no grounds were made out—Revision—Interference—Sufficiency of grounds for rejection—If can be considered

Where a lower Court throws out an application for review of judgment on the ground that no grounds have been made out for a review, it cannot be said that there has been any illegality or material irregularity in the

—S 115—Order refusing review—Revision—Competency—Grounds

No revision lies against an order rejecting a review of judgment unless the order sought to be made by a Judge who has exercised a jurisdiction not vested in him by law or failed to exercise a jurisdiction so vested or has acted illegally or with material irregularity in the exercise of his discretion (*Abdul Ghani, j.*) SIDDEGOWDA v. BOREGOWDA.

17 Mys L J 267.

—Ss. 144 and 151—Applicability—Order for restitution consequent on setting aside of execution sale—Applicability—Second appeal

An order for restitution following the setting of an execution sale is an order passed under

MYS O P CODE (1911) S 151

Code and is not appealable S 144 does not apply to the case, the operation of S 144 is expressly directed to cases Where and in so far as a decree is varied or reversed' If the order is wrongly treated as one under S 144 and an appeal entertained by the appellate Court,

In ordering restitution under its inherent powers a Court has power to go into the question of mesne profits and award mesne profits a separate suit for such profits is also permissible (*Shankaranarayana Rao and Abdul Ghani JJ*) LOKAPALIAH v CHANNAPPAH

16 Mys LJ 553—43 Mys HCR 523

—O 1 R 3—Construction—Multifarious suit—When allowed—Conditions to be satisfied

The general rule is that suits should not be multi-

that they cannot be conveniently tried as single suits he may split them into separate suits for the purpose of trial under O 2 R 6 C P Code (*Reilly CJ* and *Singaravelu Mudaliar J*) VAGGAPPA v DODDA YELLAPPA 16 Mys LJ 561 49 Mys HCR 542

—O 1 R 6—Joint promisors—Separate suits by promise against several promisors under same document—Maintainability—Contract Act S 43

Where a number of promisors have undertaken under one instrument a joint liability and where one suit can

virtue of S 43
R 6 C P Code
Mudaliar, JJ

—O 6, R
and alienation
to include more
—If to be allowed

In a suit by alienations made by their father during the term in morty an application for permission to amend the plaint in order to add some more items of property alleged to have been omitted from the plaint schedule by oversight made at the very end of the trial at the stage of argument after all the evidence in the case has been concluded would be properly refused (*Reilly CJ* and

MYS O P CODE (1911) O 22 R 3

Singaravelu Mudaliar, J) SUNDER SINGH v BORE GOWDA 17 Mys LJ 216

—O 9, R 13—Ex parte decree—Decree against several defendant as members of joint Hindu family and making joint family property liable—Setting aside

not all
several
a family
proceeded
the defend
he other
common
Mudaliar
B 216

suit—
admit

sion—Fresh preliminary decree for balance—Propriety—If justified

It is very unusual for any Court to make a partial decree for sale in a suit for sale by mortgagee in respect of part of the mortgagee's claim and leave the rest of his claim to be the subject of further litigation in the suit O 12 R 6 C P Code cannot be applied to every possible kind of suit especially a mortgage suit for which a special procedure is prescribed by O 34 C P

rent at fixed rate from date of suit to date of possession—Permissibility

O 20 R 12 of the amended C P Code in a possession of immovable property, it is not

permissible for the Court to award rent in the suit itself at any particular rate from the date of suit till delivery of possession on it can only give a direction for ascertaining the rents or mesne profits from the date of suit up to the date on which possession is delivered. (*Abdul Ghani and Nagavara Iyer, JJ*) KANA-KARATHNAMMA v RAJAPPA 17 Mys LJ 334

—O 21 R 103—Burden of proof—Suit by defeated obstructor—Onus—Proof of possession on date of proceedings for removal of obstruction—Sufficiency

is a special
ordered to be
on purchaser
the defeated
The

date when the proceedings under O 21 R 9/ were taken and then to wait for the defendant to prove his title (*Reilly CJ* and *Singaravelu Mudaliar J*) CHINNAMMA v PARASURAM SAIT

17 Mys LJ 176

—O 22 R 3—Construction and scope—Death of one of several plaintiffs or appellants—Legal representa

MYS. C. P. CODE (1911), O. 23, R. 1.

Not brought on record—Whole suit or appeal—If abates—One of several plaintiffs competent to prosecute suit or appeal—Effect—Decree without legal representa-

—O. 23, R. 1—Scope—Mortgage suit—Preliminary decree—Subsequent application for withdrawal of suit—Competency—Power of Court to permit withdrawal.

The right to withdraw a suit under O. 23, R. 1 C. P.

stage is reached, the right of a party to apply for withdrawal of the suit and the power of withdrawal under O. 23, R. 1, C (Nagavara Iyer and Singarat MALLAIYA v GURUNANJAPPA

—O. 32, R. 3 and 4—Minor defendant—Court guardian—Appointment of—If ensures for whole life—Right of another person to apply or appeal on behalf of minor—Negligence or misconduct of Court guardian—Effect of

aware of existence of minor and granting leave—Sufficiency—Compromise without express recording of leave—If void—Right of minor to ignore

MYS. C. P. CODE (1911), O. 34, R. 6

The provisions of O. 32, R. 7, C. P. Code, are very stringent provisions. The words "expressly recorded in the proceedings" in the rule prohibits the Court from

An attaching creditor is not a necessary party to a mortgage suit. A person who acquires an interest in the mortgaged property or in the equity of redemption after the suit to enforce the mortgage has been lodged does not acquire such an interest as would entitle him to be made a party to the suit under O. 34, R. 1, C. P. Code

on the mortgagee to a person takes his and to the result of a *hanu and Singaravelu*
A SETTY v KRISHNA
379=17 Mys L J, 274.

—O. 34, R. 1—Parties—Attaching decree holder—suit

not a necessary party to a *Iyer and Singarat*
HAR v NAGESHACHAR.

44 Mys H O R 266=17 Mys L J, 324.

—O. 34, R. 1—Scope—Mortgage—Subsequent sale by mortgagor to stranger—Suit by mortgagee to enforce mortgage—Purchaser not impleaded—Effect—Decree—Sale in execution—Purchaser—Rights of, as against

—O. 34, R. 6—Scope—Decree for sale that decree executory—Effect—Agency—If void.

MYS. C P. CODE (1911), O 41, R. 4.

A decree for sale in a mortgage suit providing for execution thereof personally against the mortgagor in case of deficiency, though it may be contrary to the provisions of O 34, R 6, C P Code, is not void on that ground, and would not afford a ground for revision to the High Court (*Abdul Ghani f.*) **SIDDEGOWDA v. BOREGOWDA** 17 Mys L J 267.

—O 41, R 4—Scope—Appeal—Death of one of

plaintiff—Defendant—If bound to file objections to

—O. 47, R 1—Scope—
default—Application for resti-
default—Application for revise
appeal—Rejection—Subsequent
of order dismissing application
—Competency

Where a party whose appeal of prosecution applies for restor O 41, R. 19, C. P. Code, but dismissed for default, he cannot

remedy and fails, he cannot pursue the very grounds on which in the first remedy he pursued (*SUBBA RAO v. RAMIAH* 17 Mys L J 263)

MYSOORE CO-OPERATIVE SOCIETY (VII OF 1918), S 42 and R. 25
from order of liquidator—If one under
Code—Limitation—Limitation Act, Art

The words "under the Code of C occurring in Art. 152 of the Limita

orders passed by a liquidator under S 42 and R. 25 of the Rules of the Co-operative Societies Act is one

ative Society by member—Subsequent sale of mortgaged property to stranger—Suit on mortgage by society—Purchaser not impleaded—Effect—Purchaser in execution of award—Rights of a against private purchaser from member.

S. 43 A of the Co-operative Societies Act does not prevent a Co-operative Society suing a member or past member from impleading as parties to the proceedings before the Registrar persons claiming through such member or past member, for example, a purchaser of

MYS. CO-OP. SOCIETIES ACT (1918), S. 63.

mortgaged property from a member who had already executed a mortgage on which the suit is brought. The section permits such a purchaser being brought on record in proceedings before the Registrar. Rule 16 of the rules under the Act prior to the introduction of S 43-A, also permitted such a purchaser being impleaded in a suit on a mortgage, executed by a member to a Co-operative Society. If such a person is not impleaded on the mortgage, the rights of such person, before suit cannot in any way be affected by the decree or award passed in such suit. A of the mortgaged property at a sale in execution of the award made by the Registrar in the suit on the mortgage cannot acquire full rights in the property as against the purchaser from the mortgagor member y to the proceedings *hani and Nagestara* 17 Mys L J. 321

—S 43 (c)—Award—Execution by Civil Court—Condition precedent to—Certificate by Registrar—Necessity for—Limitation for execution—Starting point of time—Date of award or date of certificate—Limita

ued as a
e) (i) of
by the
Civil Court commences to run not on the date when the

—Award by Registrar—
execution—Limitation—
MITATION ACT ART 181.
17 Mys L J. 342.

—S 43 C—Scope—Award by Registrar or his
non-est—Execution by Civil Court—Certificate of

absence of such a certificate, the application for execution has to be thrown out by the Civil Court (*Abdul Ghani, f.*) **CITY CO-OPERATIVE BANK, LTD. v. MYSOORE K. P. SWAMY.** 17 Mys L J 342

—S 63—Applicability—If confined to loans by land mortgage banks only.

S 63 of the Mys Co-operative Societies Act is confined to cases where land mortgage banks advance loans on the security of landed property and has no application to loans by other Co-operative Societies to their

MYSORE COURT-FEES ACT (1900).members (*Abdul Ghani and Nageswara Iyer, JJs.*)

RAMIAH v. APPIAH.

17 Mys L.J. 321.

MYSORE COURT-FEES ACT (III OF 1900)—**MYS CR. P. CODE REG (1904), S. 162**

purchased them himself, obtained possession through Court. The plaintiffs who were the sons of the 2nd defendant, sued for a declaration that the decree and

tained against them all and their shares in the family, property jointly the creditor appellant paying only a single court-fee of Rs 15, a joint appeal to the High Court preferred by the sons challenging the decree may be filed in the same court-fee as that paid in the Court below. It is not necessary that each of the appellant should pay separate court fee and prefer a separate appeal claiming an exemption of his individual share from the debt in dispute (*Abdul Ghani and Singaratelu Madalair, JJs.*) **RAMA RAO v. THAMMANNA.** 44 Mys H.C.R. 357=1

—Suit for possession and for me and future—Decree for possession and inquiry as to mesne profits—Appeal Court fee payable—Court-fee on amount claimed, in suit—If to be paid.

Where in a suit for possession of immovable property with past and future mesne profits the Court decrees possession and orders an inquiry as to the mesne profits the defendant appealing from the decree need not pay court-fee claimed by the plaintiff in the if he pays court-fee on the value of the appeal, viz., possession of the *Iyer and Venkataranga Iyengar* **GOWDA v. VENKAPPA.**

—(as amended by Act VIII of 1922), S. 4 (iv) (c) and Sch II, Art 11-B—Applicability—Co-owner in possession—Suit for partition—Court fee payable—Relief of injunction—If consequential relief.

A suit by a in joint possess share and for B of Sch. II of under that art in the plaint th of that allegatu case out of the relief by way o and the suit ca Act, the relief of injunction is not a consequential relief at all, as the plaintiff is already in possession, but it is an independent relief and the plaintiff can value it in his own way and pay a court fee The suit cannot be

of mortgagor for declaration that decree and execution did not bind them and for partition and possession—Court fee payable—Prayer for cancellation of decree—Necessity for.

Defendant No. 2 executed a mortgage of his family properties to the 1st defendant, who sued on it and got a decree against the 1st defendant; in execution of the decree he brought the properties to sale and, having

Y. D. 1939-36

and on default the suit was dismissed.

Held, in second appeal, that the plaintiffs were not parties either to the deed of mortgage or to the suit in which the decree was passed, that they need not ask for cancellation of the decree, and therefore court fee was not payable under S 7 (iv) (a) of the Court-Fees Act. The court fee paid by the plaintiffs was sufficient (*Nageswara Iyer and Venkataranga Iyengar, JJs.*) **KEMPE GOWDA v. KEMPE GOWDA.**

44 Mys H.C.R. 431=17 Mys L.J. 410

—S 147—Applicability and scope—Right of user of any land or water—Right to light and air through window of house—Obstruction to—Order under S. 147 in respect of—Jurisdiction to make—Grounds for making order—Proof of acquisition of right by grant or

ed most amount to an easement by prescription before an order under S 147, Cr. P. Code, can be passed, unless the claimant in other words, can show that he has acquired a right of easement in respect of light and air

—S 147—Scope—Mandatory injunction—Order amounting to—If can be made.

A magistrate acting under S 147, Cr. P. Code, cannot pass an order which amounts to a mandatory injunction of a wall or any section cannot be

h on the face of.

(*Shankaranarayana*)

VENKATARAYA

16 Mys L.J. 533=

43 Mys H.C.R. 573.

ments of witnesses taken by police and signed by them and treated as complaints—Admissibility in evidence.

Evidence of witnesses whose statements taken by the police are signed by them contrary to S. 162, Cr. P. Code, are not inadmissible on that account, when such statements are treated by the police as complaints of offence committed against them. In that view it cannot be said that the statements were recorded under S 162.

MYS CR. P. CODE REG. (1904), S 162.

Cr.P. Code
 JJ) SETTY
 —S 162
 gating officer—
 cross examina

Statements made by the accused to the police in the course of investigation are always inadmissible under S 162, Cr. P. Code, and the fact that the statements are elicited from the investigating officer during his cross examination will not make them admissible under S 162 (*Abdul Ghani and Singaravelu Mudaliar, JJ*) SETTY, *In re*. 17 Mys L J. 238

—(as amended in 1927), S. 190—Construction and scope—Police Report not preceded by investigation under Ch. XIV or first information report—Jurisdiction of magistrate to take cognizance

Under S 190 of the Mysore Cr P Code, a magistrate properly empowered may take cognizance of a cognizable case on a report by any Police Officer, even if all the formalities and investigations prescribed by Ch. XIV of the Code, have not been carried out by

MYS. CR. P. CODE REG. (1904), S 307.

those charges shall be separately tried. It is impossible to read into that provision any reference to evidence taken before a charge is framed at all (*Reilly, C. J., and Abdul Ghani, J.*) SUNDARAMMA v. GOVERNMENT OF MYSORE 17 Mys L J. 102=43 Mys H O R 675
 —S 250 (2)—Compensation—Order for—Basis of—Duty of magistrate to record finding of falsity and vexatious character of case—Magistrate holding that complainant failed to make out case against accused—If ground for order of compensation.

Under S 250, Cr P. Code, it is only where a magistrate is satisfied that the accusation against the accused was false and either frivolous or vexatious that he may direct compensation to be paid. The Court's final opinion should be that the case was false and frivolous or vexatious, it is enough

report has been
 (*Reilly C. J. and*
 v GOVERNMENT
 17 Mys L J 102=
 43 Mys H O R 675

—Ss 213 and 215—Illegal committal—Accused absconding and not appearing at inquiry—Commitment to Sessions Court for trial along with other Legality—If liable to be quashed.

It is contrary to the provisions of S 213, Cr and illegal for a magistrate to commit for Sessions Court along with others an accused who is absconding and who has not appeared before the magistrate when he held the enquiry for punishment. Such a committal being illegal is liable to be quashed under S. 215, Cr P. Code. (*Singaravelu Mudaliar, J*) PUTTAMADA, *In re*

17 Mys L J 85

—S 233—Procedure—Warrant case—Evidence

inal Procedure where in the taken against more than one person, that after charges have been framed when it becomes necessary to try the accused

would of course be the duty of the trying magistrate to use against each of the accused in disposing of the separate trial only so much of the evidence as is relevant against him; but that can be given without wiping out any evidence given already before any charge is framed. There is nothing illegal or improper in the magistrate's

out his or her case does not lead to the conclusion that the complaint was false and is not a sufficient ground for ordering the complainant to pay compensation. (*Venkataranga Iyengar, J*) THAYANMA v SEETHARAMIAH 17 Mys L J. 371

—S 250 (2)—Procedure—Order of compensation embodied in order of discharge itself—Propriety

—S 250 (2)—Scope—Order of compensation—Direction that compensation when collected should be sent to District Superintendent of Police for payment at his discretion to the several accused—Legality.

S 250 (2), Cr P Code, expressly states that the

of Police for payment at his discretion to the several accused in the case is against the express provisions of S 250 (2) and is illegal (*Venkataranga Iyengar, J*) THAYANMA v SEETHARAMIAH 17 Mys L J 371

—S 307—Powers of High Court on reference—

ade, the High Judge's view unable or perverse or against the weight of evidence, is justified by the evidence (*Abdul Ghani and Singaravelu Mudaliar, JJ*) SETTY, *In re* 17 Mys L J 238

—S 307—Reference—Grounds—Reference on the ground that jury have not reasonably, carefully and properly considered the evidence—Competency.

MYS. CR. P. CODE REG. (1904), S. 311.

A reference to the High Court under S. 307 Cr. P. Code, on the ground that, in view of the Sessions Judge, the "Jury do not seem to have reasonably, care fully and properly considered the evidence," cannot be considered to be invalid. The verdict is unreasonable.

17 Mys L J 238.

S 311—Discretion of High Court—Accused deaf and dumb and unable to understand proceedings—Committal to Sessions—Direction for detention in jail without trial—Power of High Court to make

Where in a case in which an accused who is deaf and dumb is committed for trial to the Sessions Court, and

or following the proceedings, the discretion to direct detention of during the pleasure of the Govern
Iyer and Singaravelu Mudaliar, J.

S. 312—Compliance with—Duty of Judge to put questions—Specific question about important piece of evidence—Necessity for.

It is the duty of the Judge to draw the attention of the accused to important items of evidence in the case so that he may say what he wished about it. But where the accused in answer to a general question put to him about the evidence in the case makes a comparatively long statement stating all that he possibly could say, that is sufficient for the purpose. It is no part of the duty of the Judge to cross examine the accused on his statements, and the accused cannot be said to be prejudiced as a result of any defect in procedure in the matter of questioning the accused under S. 312. (Rally, C.J. and Singaravelu Mudaliar, J.) In re ERAPPA

Ss 317 and 403—Se charge and recording plea of out conviction—Case fit for trial by Sessions Court—Procedure—Order of committal giving reasons for believing accused guilty—Effect of—If finding of guilty

acquittal may be either by the magistrate himself who frames the charge or by any other tribunal, for instance the Court of sessions to for trial. It need not be magistrate who has framed the bound to convict an acc

therefore starts an inquiry as if he case himself, but in view of evidence of previous conviction, he finds that the case is a fit case for committal, he can, under S 347, Cr P. Code, commit the accused to the Sessions Court for trial instead of completing the

MYS CR. P. CODE REG (1904), S. 493.

trial himself. The proceedings held before him must be regarded as proceedings in an inquiry preliminary to commitment. The giving of reasons by the magistrate for thinking the accused to be guilty does not amount to

ration of the
Aiyar and
UTII, In the
17 Mys L J 298.

S 403—Applicability—Finding of guilty—What amounts to—Committal order—Magistrate giving reasons for believing accused guilty—Effect of. See MYSORE CR. P. CODE, SS 347 AND 403

17 Mys L J 298.

S 403—Scope—Finding of guilty of charge framed—Subsequent committal to sessions—Jurisdiction. Where a magistrate after examining witnesses and

S 439—Acquittal—Revision against—Interference—Jurisdiction of High Court—Grounds for interference—Principles

Under S 439, Cr P Code, the High Court has jurisdiction to interfere with an order of acquittal, but it will not ordinarily interfere in revision in such cases at the instance of a private prosecutor. Where an order of acquittal is wrong by reason of an erroneous view of the law taken by the lower Court the High Court would order a retrial in the exercise of its revisional powers. Where a revision is sought on the ground of erroneous appreciation of evidence, interference must be confined to cases of gross misappreciation which must be of a greater or stronger degree than in the case of a revision of an exceptional character

(Singaravelu Mudaliar, J.)
17 Mys L J 416.

S 439 (5)—Order under S 562 (1 A)—Revision—Competency

revision in cases when
A person dealt with
has a right of appeal
a revision application
MUDALAPPA v. MALLI
17 Mys L J 317.

S 495 (3)—Scope and effect—Vaklat executed by minor—If invalid—Contract Act, S 11

A minor is not legally incompetent to execute a him in a Contract 498 (3), may do a minor ted by a vision in tal cases ara Iyer PPA v. E 119

Magistrate com-
pervised by Sessions Judge under S. 17 (4) is erroneous and dispose of urgent applications—Application for bail by person convicted before filing of appeal—Power to deal with.

MYS CR P CODE REG (1904), S 522.

A District Magistrate who has been empowered by the Sessions Judge under S 17 (4) of the Code of Criminal Procedure to entertain and dispose of urgent applications is competent and has power to grant bail to an accused who has been convicted but who has not yet preferred an appeal. S 17 (4) is couched in very general terms and the words any urgent application include applications for bail falling under S 498 or 426 Cr P Code. (*Sankaranarayanan Rao and Singaravelu Mudaliar, JJ*) **RANGACHARI** *In the case of*

43 Mys HCR 620—17 Mys LJ 66

—S 522—Order restoring possession—Execution by police—Magistrate's power to direct—Duty of police—Possession of third party—If excluded from scope of section

An order under S 522 Cr P Code for restoration or possession of property is capable of being carried out though there might be no specific provision in the Code as to the mode of restoring possession and the police are bound to carry out such an order though it might amount to undertaking a quasi civil function by the police. The Magistracy has got the right and the power to utilise the services of the Police to carry out their orders lawfully made by virtue of S 48 (1) (a) of the

17 Mys LJ 445

—S 562 (1A)—Appeal—Person convicted but admonished and set free—Right of appeal—Revision

A person who has been dealt with under S 562 (1A)

revision application cannot be entertained in such cases (*Singaravelu Mudaliar J*) **MUDALAPPA v MALLAMMA**

17 Mys LJ

MYSORE HINDU WOMEN'S RIGHTS

(X OF 1933)—Applicability to Jains

The Mysore Hindu Women's Rights Act

matters with which the Act deals. Jains in Mysore who do not show that in any matter the custom excludes them from being governed by the law of the Mitakshara are subject to the

Mudaliar J)
KUMARIAH

—Scope as to family—Right to claim possession of property against manager of the family—Fee If coparceners

A member of a joint Hindu family or coparcener cannot claim to be in possession of the properties belonging to the family. A Hindu coparcenary is a body other than the joint family which acquires by birth an interest in the joint or coparcenary property. The partition takes place among the common enjoyments. A female can be a coparcener. The Hindu Law, Mysore of 1—1—1911, coming into force prior to its en-

MYSORE INSOLVENCY ACT (1911) S 37

possession of a female member of a joint family. Though a female member is entitled to a share in a family partition by reason of the new Act, the Act gives her no right to resist a suit by the manager of the family for the recovery of possession of family property in her possession; she has no right to be in possession of the properties along with the coparceners much less can she claim exclusive possession. (*Singaravelu Mudaliar and Venkata Ranga Iyengar JJ*) **CHIKKANAGAMMA v SIVASWAMI**

17 Mys LJ 481

—S 8 (1) (b)—Applicability—Suit for partition by minor filed before Act—Preliminary decree passed after Act—Right of plaintiff's mother to share in such partition—Retrospective operation

In the Mysore State, when a minor Hindu sues for partition, the division of status in his family does not occur until the preliminary decree for partition is made. S 8 (1) (b) of the Hindu Women's Rights Act applies to partitions made after that Act comes into force. Where in a suit instituted by a minor before the Act came into force, a preliminary decree is passed after the Act, the division or partition is effected only on the date of the decree after the Act came into force and

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—S 10 (2) (g)—Scope and effect—Hindu dying leaving son—Death of son without discharging debts left by deceased father—Mother inheriting to son—

See HINDU LAW—DEBTS

43 Mys HCR 566

—Retrospective effect—Husband's
fore Act—Right of first wife to

claim separate maintenance

S 23 (c) of the Mysore Hindu Women's Rights

and not otherwise
(*Abdul Ghani and Nagaraj Iyer JJ*) **NAGAMMA v PUTTANARASAPPA**

44 Mys HCR 392

17 Mys LJ 376

HAM RULES R 6 (b)—Grant by personal namam—Grant hereditary and to son failure of lineal heirs—Namam not en-

Held, that on the construction of the rule the estate conveyed to the life of the plaintiff, *Mudaliar, GIRI* 249 1911), null

MYSORE INSOLVENCY ACT (1911), S. 52.

ment of adjudication—Effect of, on powers of debtor to deal with property—Appointment of receiver by subsequently—Validity.

After an order of adjudication has been annulled, the receiver, if there is any, becomes *functus officio*, and no receiver, as such, can be appointed thereafter either under S. 56 or S. 57 of the Insolvency Act. Such an appointment would be *ultra vires* and anything done by such a receiver is not valid. After the annulment of the adjudication, the property reverts (certainly in the absence of an order under S. 37 of the Act) with all its incidents to the debtor. A purchaser under such circumstances cannot be affected by any subsequent order under S. 37 of the Act. (*Abdul Ghani and Singaravelu Mudaliar, JJs.*) **RAJAPPA v. NARAYANA SETTY.** 44 Mys R O B 187 = 17 Mys L J. 289

—S. 52—Applicability—Conditions—Non appointment

...

appointed, the executing Court is entitled to refuse to stay the sale and to allow it to proceed. There is no reason why the sale should be stayed pending

—Ss. 56 and 57—Annulment of adjudication—Property—If reverts to debtor—Power of Court to subsequently appoint receiver. See MYS INSOLVENCY ACT, ss. 37, 56 AND 57. 44 Mys H O B 187

MYSORE LIMITATION ACT (IV OF 1911), S. 7
—Applicability—Hindu joint family—Undivided brothers—Suit to set aside alienations made by one brother during their minority—Limitation—Suit after the expiry of three years of attainment of majority by one brother—Bar of—Alienation by manager and guardian—Distinction

...

the alienation attacked is valid. Since the eldest of the brothers obtained a valid discharge within the limitation Act, equally in both cases such alienations must be brought within three years from the date when the eldest attains majority, and if he fails within the time allowed to attack the alienation, then not only he but also his undivided brothers are bound by that failure. His younger undivided brothers

MYSORE LIMITATION ACT (1911), Art. 41

...

—S. 19—Acknowledgment—What amounts to—Execution pending—Application by debtor praying for relief under Agriculturists' Relief Act and for time for payment—Plea that he is not justly liable to pay the amount—If acknowledgment

... pendency of an application under the Agriculturists' Regulation Act, that they are entitled to the relief under the Agriculturists Relief Act, that it is not possible for them to pay the decree amount in a lump sum and that they wanted a period of 8 years to pay the amount, that amounts to an acknowledgment of liability within the meaning of S. 19 of the Limitation Act, and would save the application for an execution application. (*Nageswara Mudaliar, JJs.*) **VENKIAH v. SETTY.** 17 Mys L J. 252. *pal and surety—Acknowledgment—Limitation for suit against latter*

of action—Effect—Decree for sale against property sold—If can be made

Defendants 1 to 3, and their deceased father and brother executed a mortgage of their properties to plaintiff on 19th March, 1914. There were two payments made on 7th July, 1915 of the terms of the mortgage. Defendant, who in 1923, a suit against the defendants 1 to 3 in the first instance on the mortgage. Later on

Held (1) that as against defendants 4 and 5 the suit

...

—Arts. 41 and 126—Applicability—Suit by Hindu undivided brothers to set aside father's alienations—Limitation applicable

Art. 44 of the Limitation Act does not apply to a suit by a Hindu governed by the *Mitakshara* Law to

MYSORE LIMITATION ACT (1911), Art. 47.

aside his father's alienation of ancestral property. The proper article applied is Art 126, and the period of

—Art 47—Applicability—Person impleaded in proceedings under S 145, Cr P Code, but subsequently removed from record and not given chance to contest—If bound by order—Suit in respect of property—Limitation

Art 47
suit brought
proceeding
order with respect to the property in suit was raised even though original parties proceeded same suit by such a person in respect of such property is not governed by the shorter period of limitation prescribed by Art 47 (*Abdul Ghani and Singaravelu Mudaliar, JJ*) VENKATANARASIMHACHAR v VENKATANARASIAH 44 Mys H C E 1—17 Mys L J 35

—Art 49—Applicability—Suit for return of jewels lent or their value—Limitation—Starting point—Arts 115 and 145

A suit for recovery of jewels or ornaments lent to the defendant or their value falls under Art. 49 of the Limitation Act and time begins to run from the date of demand and refusal. Neither Art 115 nor Art 145 can be applied to such a suit (*Rutley, C J and Shankaranarayana Rao, J*) KUMARASWAMY v MADDUR CHENNABASAPPA 44 Mys H C E 70—17 Mys L J 57

—Art 152—Applicability—Judge from order of Liquidator of under S. 42 and R. 25 of Co opera Limitation for. See MYSORE CO OP ACT, S 42 AND R 25. 43 Mys H O R 583.

—Art 181—Applicability—Award by Registrar of Co operative Societies—Execution by Civil Court—Application for—Limitation—Start

Art 181 of the Limitation Act
an application to a Civil Court to pass an order for execution of a decree passed by the Registrar or Assistant Registrar of Co

as if the award were a decree, i.e., to execute it in the same manner as decrees are executed under the Such an application is governed by Art 181 Limitation Act, and the period of three years commences to run from the date of the certificate

under Mysore Co operative Societies Act—Execution by Revenue authorities—Subsequent execution application to

MYSORE REGISTRATION ACT (1903), S 49.

Civil Court—Limitation for—If saved by proceedings before revenue authorities.

Art. 182 of the Limitation Act has no application to an execution application presented to the revenue authorities to execute an award under the Co operative Societies Act. The revenue authorities in such a case are not "Courts" for purposes of Art. 182 (5) of the Limitation

to third party—Dis honour by bank—Liability of drawer counter-

n favour
between the
the bank
against the

maker of the cheque. The payee has a right of suit against the drawer, unless the latter can prove want of consideration or any other plea contemplated by S. 43 of the Negotiable Instruments Act. The fact that the cheque was drawn for accommodating a third party will not absolve the drawee from liability which is created by law, and S 30 of the Act entitles the payee to recover damages from the drawer in case of dishonour of the cheque. It is not open to the drawee to plead that he was only accommodating another and that he had received no consideration and that therefore he was not liable. It is not necessary that consideration should have been received by the drawee so long as the payee has paid consideration nor would it make any difference that the cheque was a post-dated one. In a post-dated cheque, the date of payment is postponed. The fact that it is post-dated does not entitle the drawer to counter-

arrives at his plea—
(*Abdul Ghani and RAPPA v NAGAPPA*, = 17 Mys L J 392.

—S 87—Material alteration—What amounts to—Test to determine—Adding rate of interest in blank space in promissory note—Effect of

adding a rate of interest in a promissory note, which was invalidly altered, is void as to the interest added.

of the parties to the instrument and whether it would (*Nagarwara Iyer*) HONNAPPA v. Mys H C R 235—17 Mys L J 230.

MYSORE REGISTRATION ACT (1903), S 49(1)

CODE, S. 522, 17 Mys L J 445

REGISTRATION ACT (1903),

—Scope—Lease of building for 11 months on rent 40 per month—Rental agreement by lessee with him to get the shikaste portions set right in case of building—Suit for possession and damages by fire—Admissibility of agreement with registration—Validity of covenant after expiry of period of T. P. Act, Ss. 4 and 116—Scope and effect of, nuff let a building to the defendants for eleven months from 1—10—1927 at a rent of Rs. 40 per month, the defendants executed rental agreement in

MYSORE TOWN MUNI. ACT (1933), S 158

MUNICIPALITIES ACT, S 158 (1) AND (2)

43 Mys HCR 624

—S 158 (1) and (2)—*Notice issued by President of Municipal Council—Absence of proof of legal delegation of power by Council to President—Effect on validity of notice—Failure to comply—Offence—S 24 (d)*

The power vested in a Municipal Council under S 158 (1) of the Town Municipalities Act should be exercised only by the Municipal Council unless that power is legally delegated by the Council to the President or any other officer of the Council. The President of the Council cannot by himself exercise that power without any proper delegation from the Council. The power to issue a notice under the sub-section is not a mere executive act of the kind referred to in S 24 (d) of the

In the absence of evidence to show that it was instance of the Council that the President issued a notice under S 158 (1), a notice issued by the President is not a proper and valid notice, and therefore failure to comply with such a notice does not amount to an offence punishable under S 158 (2) (*Shankaranarayana Rao and Singaravelu Mudaliar, JJ*) **ABOUL RAZACK AHMADI v SANITARY INSPECTOR SHINOGA TOWN MUNICIPALITY** **43 Mys HCR 624=**
17 Mys LJ 81

MYSORE TRANSFER OF PROPERTY ACT

(IV OF 1918)—Applicability to sales in execution See MYSORE C P CODE S 60 **17 Mys LJ 69**

—S 4—Scope and effect of—S 17 of the Registration Act—If added to T P Act See **MYSORE REGISTRATION ACT S 49** **44 Mys HCR 140**

—S 10—*Applicability to grant by Government*
S 10 Transfer of Property Act, does not apply to grants by Government (*Abdul Ghani and Singaravelu Mudaliar JJ*) **KHANI BEGAM SAHEBA v KRISHNA NANDAGIRI BAVAJI** **17 Mys LJ 305=**
44 Mys HCR 249

—S 52—*Applicability—Court sale in execution money decree after final decree in mortgage suit before sale thereunder—If affected*

A sale of mortgaged property in execution of a mortgage decree after final decree is passed in the mortgage suit and before the sale is affected by the doctrine of *lis pendens*, the mortgage suit must be treated as pending until the sale actually takes place (*Nageswara Iyer and Singaravelu Mudaliar JJ*) **SUNDARA CHAR v NAGESHACHAR** **44 Mys HCR 266=**
17 Mys LJ 364

—S 52—*Applicability—Mortgage decree—Proceedings in execution—Sale of mortgaged property in execution*

age suits

of the mortgaged property in execution of a decree against the mortgagor held during the p

undisputed damages for breach of contract—Right to impeach settlement by debtor in favour of wife

For the purposes of S 53 of the Transfer of Property Act a person having a claim for undischarged debt for breach of contract against another is not the latter, so as to entitle him to impeach settlement effected by the debtor in favour of such a person would become a creditor

MYS WORKMEN'S COMP ACT (1923), S 29.

obtaining a decree for damages (*Abdul Ghani and Nageswara Iyer, JJ*) **KANAKARATHNAMMA v RAJAPPA** **17 Mys LJ 334**

—S 59 (2)—*Construction—Memorandum accompanying deposit of title deeds—Contents of—Insertion of more particulars than those required by law—If invalidates transaction*

The provisions of S 59 (2) of the Mysore Transfer of Property Act are an exception to the ordinary registration law, and in that sense they must be strictly construed. But though in interpreting an exception in a statute or an exception to a law, the Court must be careful not to stretch the exception more than is strictly

an elaborate document containing much more information than is required to be put into it under the section is no ground for holding that it does not fall under S 59 (2) or that it is invalid. If a memorandum, for example, contains not only the property to be mortgaged and the extent of the credit to be given—which is all that is required by the section,—but also mentions the rate of interest payable by the mortgagor, the charges and costs or other particulars it cannot on that ground be held that the whole transaction is invalid or that it is ineffective to create an equitable mortgage (*Rully C J and Singaravelu Mudaliar JJ*) **ANNIAH v BANK OF MYSORE LTD** **17 Mys LJ 60=**
43 Mys HCR 652

—S 76 (b)—*Accounts—Mortgagor's right to demand—Limitation*

A mortgagor is bound to render to the mortgagor under S 76 (b) of the Transfer of Property Act full, clear and accurate accounts of all the sums received by him at the time of redemption. No question of limita

—S 116—*Expiry of period of lease—Effect—Tenant holding over—Liability of, on covenant in expired lease See MYSORE REGISTRATION ACT S 49*

44 Mys HCR 140

MYSORE WORKMEN'S COMPENSATION ACT

(VIII OF 1923) (as amended in 1936) S 3 (2A)—

Construction—Right to compensation in respect of occupational disease—Conditions of—Compliance with rules not yet made—If can be insisted on

The plain meaning of the words of S 3 (2A) of the Workmen's Compensation Act is that the right to compensation in respect of any occupational disease specified

with the right to cannot be Govern

Singaravelu Mudaliar, JJ

THE SUPERINTENDENT

44 Mys HCR 157=

17 Mys LJ 167

ling of fact as to cause of

appeal

Under the proviso in S 29 of the Workmen's Compensation Act, if a substantial question of law is raised in the appeal before the High Court the Court is

NAIK GIRLS' PROTECTION ACT (1929), S. 4—
Order under—If a judicial order—Magistrate passing order if acts as an inferior Criminal Court—High Court, if can exercise powers under S. 539, Cr. P. Code.

There is nothing in the Naik Girls' suggest that in exercising the powers Act the District Magistrate is required Judicial Officer presiding over a Criminal bound to observe any rules of procedure which govern an inquiry, trial, or other proceeding under the Criminal Procedure Code. Where an order passed under S. 4 of the Act was sought to be revised by the High Court under Ss. 435 and 439, Cr. P. Code, on the ground that no inquiry or other proceeding according to the Criminal Procedure Code was held that the order was not a sentence and was not an order under the provisions of the Indian

if an inquiry was held the various procedures prescribed by Criminal Procedure Code would not in terms be applicable to such inquiry. It was further held that the order was passed by the Magistrate in the exercise of special powers conferred on him by the Act and in doing so he did not function as an inferior Criminal Court and hence the revisional powers under S. 439, Cr. P. Code, could not be invoked for setting it aside (*Mulla, J.*) **HAZARI v. EMPEROR ILR (1939) All 178=**
180 IC 37=11 EA 407=40 Cr. L.J. 305=
1938 ALJ 1147=1939 AWR (HC) 164=

AIR

NEGOTIABLE INSTRUMENT—F
 receipt of money deposited in Bank—If
 endorsement and delivery See T. P. ACT

1939 M. W. 400

—Promissory note by manager of family—Endorsements—If assignment of of endorsee to sue other members of family

Where a promissory note executed by the a joint Hindu family is endorsed over by stating *inter alia*, "I have assigned this promissory note in your favour," the endorsement is no more than an endorsement of the note. There is no assignment of the debt in such a case to the endorsee. In a suit by the endorsee on the note, he is entitled to succeed only against the executant of the note and not against the other members of the same family of which the executant is the manager (*Gentle, J.*) **KALIANA THEVAN v. MUTHUSWAMI GOUNDAN 50 L.W. 797**

—Promissory note—Indorsee for collection—Power of to negotiate and indorse it to another

An indorsee of a promissory note for collection must be held to be an agent for collecting the money due on the note. He is not authorised to negotiate the note to any other person. Any indorsement and negotiation by him would be beyond his power and would confer no right on the indorsee to maintain a suit on the instru-

ledgment executed by defendant in false name of wife of state of account between her husband and defendant—If promissory note—Limitation Act, Art 73—Applicability

In order that a document should be a promissory note within the meaning of S. 4, not only must it be a promissory note in form but it must in addition be intended by the parties to be a promissory note, i.e., it must be intended to be negotiable and to pass from hand to hand. Where a document executed by defendant is

NEG. INSTR. ACT (1881), S. 15.

merely an acknowledgment in the false name of the plaintiff of the state of account between her husband

makes a bond

Where a document recited that a sum of money has been borrowed from another on "account of family" and the sum was to be repaid on demand, so being reduced and attested by the plaintiff, it is clearly to be held

1939 O.W.N. 168=AIR 1939 Oudh 107.

—Ss 8 and 9—Holder—Hindu joint family firm—Promissory note in favour of—Subsequent partition—Allotment of note to some members—Suit by latter along with other members on note—Maintainability—Absence of endorsement—Effect of.

Where a promissory note executed in favour of a Hindu joint family firm, is allotted at a subsequent partition among the members constituting that firm to some of them, the latter to whose share the instrument

—Ss 8 and 78—Promissory note—Suit on by payee—Plus that plaintiff is benamidar—Maintainability

A payee named in a promissory note is the only person who can institute a suit upon it, and it is not open to a defendant in that suit to plead that the

—Ss 8 and 78—Promissory note—Suit on by surviving coparcener of holder—Competency.

A person who is not the holder or endorsee of a promissory note but who only claims to be the surviving coparcener of the holder of the note is not entitled to sue on it. It would, however, be different if the suit is based on the debt itself (*Datta, J.C. and Tyabji, J.*) **SUMARNAL SHEVOMAL v. SUMAR HAJI**

ILR. (1939) Kar. 405=182 IC 825=
12 RS 40=AIR 1939 Sind 144.

—S 15—Promote in favour of managing agents of Bank—Endorsement by its principal officer to plaintiff—Latter's right to sue on note

Money was borrowed by the defendant from a Bank by executing a promissory note in favour of the managing agents. The principal officer of the Bank endorsed the promissory note in favour of the plaintiff. In a suit on the promissory note by the plaintiff,

Held, that the Bank and not its managing agents were the holders of the promissory note and that, there

NEG INSTR ACT (1881), S 20

the plaintiff was entitled to sue on it (*MC Ghose, J*)
HEM NALINI DEBI v NISITH NATH KUNDU

181 I C 1004—10 R C 886—68 C L J 405=

A I R 1939 Cal 256

—Ss 20 and 118—Promissory note—Master denying execution in existing form—Burden of proof

If the plaintiff sues on a promissory note and the defendant admits or has had proved against him conclusively his signature and/or his thumb impression on the promissory note but the defendant asserts that he did not sign the promissory note in the condition in which it is filed the burden of proof lies on the defendant to show that the promissory note was not in its

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—S 27—Agent of endorser signs & on behalf of principal—Liability of endorser

An objection by an endorser of a negotiable instrument that the signature of the endorser does not appear on the face of the negotiable instrument, as it is signed by his agent without any mention being made that he is acting on behalf of his principal cannot be upheld when on a fair interpretation of the document the name of the person liable is disclosed and the evidence shows that the agent signed the negotiable instrument under the implied directions and with the explicit knowledge of his principal. It is only when there is some doubt regarding the identity of the drawer that the matter can be agitated before the Courts (*Addison and Ram Lal JJ*) *PUNJAB CO-OPERATIVE BANK LTD v MUHAMMAD YUSAF* A I R 1939 Lah 225

—Ss 27 and 28—Promissory note by guardian of minor—Note not disclosing borrowing on behalf of minor—Debt incurred for purposes binding on minor—Liability of latter's estate See MINOR—DEBT BY GUARDIAN 50 L W 374

—S 28—Scope—Manager of joint Hindu family—Promissory note for goods purchased and money borrowed for necessities of family—Suit on existing purchases and loans also—If based on note alone—Decree against other members of the family than manager—Right to

the defendants had been benefited by the money sued for

Held that the suit was both on the promissory note and also on the debt so far as the other members of the family than the manager were concerned. A decree could therefore be passed against the other members

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—S 35—Scope—Person entrusted with for investment on landed property—Lending on promissory note taken in own name—Endorsement of owner of money—Suit by owner—Liability of endorser—Consideration for endorsement—Undertaking to clear the loan—If makes him guarantor

Where a person who is entrusted with moneys by another for being invested on the security of immovable property, lends it out to others on promissory notes

NEG INSTR ACT (1881), S 37

taken in his own name without any security, and endorses the notes to the owner of the moneys and also assures him that the moneys are safe and that he would go to the owner with the executors of the notes and clear the loan he is liable to the indorsee as indorser under S 35 of the Negotiable Instruments Act. It cannot be said that the endorsements are without consideration within the meaning of S 43 of the Act. Since the endorsements are part and parcel of the same transaction, the consideration for the same is the money received by him from the owner of the money. Further, the fact that he has taken the instruments in his own name shows his intention to share the liability and his undertaking to go with the makers to the endorsee and clear the loan makes him a guarantor and liable as such (*Leach C J and Varada chariar J*) *BALAKRISHNAN NAMBIAR v CHATHU*

1830 M L N 250—A I R 1939 Mad 848= (1939) 1 M L J 897

—S 37—Applicability and scope—Namjogi hundi—Transit by post—Loss and theft—Removal of name of payer and endorsement to third party—Payment to latter by drawee—Suit for amount of hundi against drawer and drawee—Liability of drawer

The plaintiffs applied to defendant No 1 for a 'Namjogi hundi' drawn by the latter and made payable to A whose name was mentioned in the hundi as the payee. The plaintiffs received the hundi and sent it by ordinary post to A. The cover containing the hundi miscarried in post and the hundi was intercepted by some thief who cleverly removed the name of A the payee thereon, thus making the hundi read 'Payable to Shah', and on the reverse he made an endorsement making the hundi payable to G C & Co. This endorsement however bore no signature whatever. The hundi was delivered to G C & Co who presented to the drawees, defendant No 2 who paid the amount to G C & Co. The drawees failed to detect the alteration though a person with reasonable care could easily detect the alteration. In a suit by the plaintiff against the drawer and drawee defendants 1 and 2, for payment of the amount of the hundi:

Held, (1) All that the drawer defendant No 1, guaranteed in the case was that the drawee would

drawees (3) that it could not be inferred that because the drawee remained liable by reason of having paid to a wrong party under a forged endorsement therefore the drawer (defendant No 1) also continued to be liable, (4) that the defendant No 1 being a party to the instrument prior to the one responsible for the alteration and fraud, could not be held liable as they were in no way concerned with or privy to the alteration in the hundi (5) that the drawers were in no way responsible for the hundi falling into the hands of the thief or the alteration

Act were applicable not only was the hundi drawn by defendant No 1 accepted but it was in fact also paid by the drawees defendant No 2 and therefore the plaintiffs could not hold the drawees liable (*Wadia and Indarnarayan JJ*) *LALLUBHAI BHUKHARAI v RATANCHAND* 41 Bom L R 1237

NEG. INSTR. ACT (1881). S. 43.

—Ss 43 and 8—*Transferee of a promissory note under deed of sale—If entitled to rights of a holder.*

A transferee under a sale-deed of a promissory note, without any endorsement on the note itself, is not a holder thereof within the meaning of S. 8 of the Negotiable Instruments Act and as such cannot enforce the rights conferred on the holder by S. 43 of the Act (*Bennet and Gangs Nath, J.J.*) JANG BAHADUR SINGH v. CHANDER BALI SINGH.

I L R. (1939) All 419 = 181 I O 897 = 11 R A 623 = 1939 A W E. (H C) 213 = 1939 A L J 206 = A I R. 1939 All 279

—S 46—*Scope—Delivery of instrument to person advancing money and not to person whose name appears as payee—Sufficiency*

maker or by some one authorised in that behalf. So long as there is a delivery with the intention of completing the transaction to the person who actually advanced the money under the instrument, the complete transaction. The maker by an indorsee from the payee, question indorsee or the payee on the ground that only a benamidar, or on the ground delivery to the person whose name, (*Pandurang Kow, J.*) SANNACHANI CHETTIAR v. RAMASAMI CHETTIAR

1939 M W N 831 = 50 L W 357 = A I R. 1939 Mad 858 = (1939) 2 M L J 501

—S 46—*Scope—Suit on promissory note—Plea that note was not to be operative presently and that it was only conditional—If open.*

—S 50—*Indorsee of promissory note executed by Hindu coparcener—Rights of as against other coparceners such father or son of executant—Transfer of Property Act S. 8—Applicability*

In a suit by an indorsee of a promissory note based upon the promissory note, which has been executed by a Hindu coparcener, neither the son nor the father of the executant can be made liable directly on the instrument

the Transfer of Property Act cannot apply and is of no avail to the indorsee (*Pandurang Kow and Aidur Rahman, J.J.*) VIRARAGAVALLU NAIDU v. CHINNA RAJALINGAM

1939 M W N 774 = 50 L W 336 = A I R. 1939 Mad 816 = (1939) 2 M L J 531.

—S 76—*Presentment—When not necessary.*

Presentment of hundi is not necessary, where the drawee has no residence or place of business or a known address at the place at which the hundi is due, the date on which the hundi is due, found personally present there on the presentment is not necessary under S. the party sought to be charged there engaged to pay notwithstanding

NEG INSTR. ACT (1881), S 87.

(*Addison and Ram Lall, J.J.*) PUNJAB CO OPERATIVE BANK, LTD. v. MUHAMMAD YUSAF.

A I R. 1939 Lah. 225.

—S. 76 (b)—*Promise to pay—If can be implied.*

A promise to pay within the meaning of S. 76 (b) need not be expressed so long as it is clearly deducible from the language employed by the parties or their conduct. (*Addison and Ram Lall J.J.*) PUNJAB CO OPERATIVE BANK, LTD. v. MUHAMMAD YUSAF.

A I R. 1939 Lah. 225.

—S 76 (b)—*Promise to pay—What constitutes.*

An endorsement by the notary public on a negotiable instrument to the effect that 'Endorsers state if drawer does not pay will pay at the request of the manager' imports a promise to pay by the endorser within the meaning of S. 76 (b) (*Addison and Ram Lall J.J.*)

LTD. v. MUHAMMAD

A I R. 1939 Lah. 225.

drawee same person—

Presentment, if necessary.

Where the drawer and drawee are the same person, no presentment on due date is necessary, because the

case of a payable to a (*Addison and* BANK, LTD. Lah. 225.

—S. 78—*Promissory note—Suit by beneficial owner—Claim to decree on ground that payee is only a benamidar of plaintiff—Maintainability*

S 78 of the Negotiable Instruments Act should be strictly construed, and a valid discharge of promissory note can be given only by the payee thereof or the holder of the note. There is no such thing for this purpose as a *benami* promissory note taken in the name of one another. No in favour of

SWASATI MANGAMMA 1939 M W N 1207 =

50 L W 917 = (1939) 2 M L J 812.

—S 87—*Alteration in instrument—If properly made—Burden of proof*

Where the instrument appears to be altered, it is incumbent upon the person suing on the instrument to show that the alteration was not improperly made. (*Addison and Ram Lall, J.J.*) SRI CHAND SHEO PRASAD v. LAJJIA RAM 182 I C 330 = 12 R L 14 = 41 P L R. 356 = A I R. 1939 Lah. 31.

—S 87 and Evidence Act (I of 1872). S 92—

Where it was the common intention of parties that interest was to be paid, but owing to an accidental omission the *Sarkhat* did not contain any such provision, an alteration to that effect made without reference to the debtors does not make the instrument void oral evidence to prove the existence of agreement to pay interest is admissible, for proviso (2) to S 92 of the Evidence Act makes any separate oral agreement as to any matter on

NEG INSTR ACT (1881), S 87.

1939 A W R (H C) 79=1939 A L J 46=

—S 87—Construction—*Alt*
When makes instrument void—Alt
or heir but by stranger—Promissory note depending on
minor—Material alteration by stranger—Suit by minor
—Right to decree on original consideration

The alteration referred to in S 87 of the Negotiable Instruments Act refers to a deliberate alteration by a party to the instrument or by one on whom his interest had devolved and not by a stranger, particularly when no conduct can be imputed to the party in whose favour the alteration has been effected or from which either his complicity, laches or negligence may be inferred. A subsequent alteration by a stranger would not deprive the person who had advanced the money or to whom the money had become payable subsequently on account of the promisee's death his remedy to bring a suit for the money advanced to the maker by way of loan. S 87 would not therefore stand in the way of a minor plaintiff, who was a minor on the date of the alteration in question, getting relief on the original cause of action (*Abdur Rahman, J*). KRISHNA CHARANA PADHI v GOUROCHANDRA DYANO SUMANTO

50 L W 748=(1939) 2 M L J

—S 87—*Fraudulent alteration of hand*
Right to relief on basis of original consideration

Where it is found that a hand sued on has fraudulently altered the plaintiff should not be granted any relief. A person who has altered an instrument is not entitled to succeed on the basis of the original consideration and to rely upon the altered instrument as

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 ment

The alteration to speak a different language in legal effect from that which it originally spoke, which changes the legal identity or the character of the instrument either in its terms or the relation of the parties to it is a material alteration or change. An alteration in the date of the instrument is a material alteration within the meaning of S 87 of the Negotiable Instruments Act. Where the date of execution of a promissory note and the date of endorsement of a payment made by the maker are altered the alteration of the dates is a material alteration (*Abdur Rahman, J*). PADHI v GOUROCHANDRA DYA

50 L W 748=

—S 95—*Notice of dish*
endorsement of promissory note
endorsement of payment on barred instrument—Notice
of dishonour—If necessary.

KATTYALI 50 L W 519=1939 M L J 110

(1939) 2 M L J 760

—Ss 120 and 121—*Applicability—Application*
under S 19 Madras Agriculturists Relief Act—
Evidence to prove that debt under instrument executed

N W F BENT ACT (1873), S 9

after 1932 was incurred before 1932 and that instru-

nents Act
 ie Madras
 Agriculturists Relief Act for relief of debtors who are agriculturists. The words "suit thereon" in Ss 120 and 121 clearly show that the proceeding intended to be denoted by those words is a proceeding initiated by some one who is entitled to sue or take legal steps to recover the money due on a negotiable instrument, by the promisee or payee and they cannot apply to proceedings initiated by the maker or promisor for relief under a special Act like the Madras Act IV of 1938. There is consequently no estoppel in the way of an applicant under S 19 of Madras Act IV of 1938 which prevents him from establishing that a debt evidenced by a negotiable instrument executed after 1932, was really one incurred before 1932 by showing that the instrument was in renewal of an earlier instrument executed prior to 1932. So far as Madras Act IV of 1938 is concerned there is no justification for regarding a debt incurred under a promissory note in a different way from other debts, as the object of the Act is to give

NEW PLEA See PRACTICE
 NORTHERN INDIA CANAL AND DRAINAGE
 ACT (VIII OF 1873), S 15—*Revenue Officer not*
awarding compensation—Suit against Government for
compensation—If barred

S 15 is a special case which has its own procedure to govern it prescribed in the Act. Under S 15 it is the officer who is to tender compensation to the proprietor

reference to the Collector a suit by the person against Government claiming compensation is not barred by any provisions of the Act (*Dalip Singh, J*). AMAR KAU v SECRETARY OF STATE

A I R 1939 Lah 583

NORTH WEST FRONTIER PROVINCE COURT
 REGULATION (I OF 1931) S 23 (3)—*Interpreta*
tion

S 23 (3) when properly interpreted means that a senior Sub Judge who takes cognizance of proceedings

—S 30—*Applicability—Appeal from orders under*

appeals from an order made
 (Almond, J C and Mir
 PARKASHA NAND
 15=A I R 1939 Pesh 30

RENT ACT
 mortgage of
 redemption
 Rent Act of

OATHS ACT (1873), S. 5.

1939 A.W.R. (H.C.) 108 = 1939 R.D. 74 =
A.I.R. 1939 All. 236.

OATHS ACT (X OF 1873), Ss 5, 6 and 13—*Child witness—Omission to administer oath or affirmation—Evidence, if admissible.*

Every person who is examined as a witness shall make an oath or affirmation and there is no exception in the case of a child of tender years. Therefore if a child is adjudged to be a competent witness, an oath or affirmation must be administered to him before he is examined; but an omission whether deliberate or inadvertent to do so does not render his evidence absolutely inadmissible.

S. 191 and OATHS ACT, S. 14. 1939 N.L.J. 396.

ORISSA TENANCY ACT (II OF 1913), S. 2(8)—*"Holding"—Land held jointly by several co-shares—Shares of each—If separate holdings—Tests to ascertain.*

A "holding" as defined by S. 2(8) of the Orissa Tenancy Act is a parcel or parcels of land. Where joint owners hold a parcel of land on certain shares of one of them does not itself become one of land, unless and until those shares are partitioned, of course, by partition, the shares may be converted into separate parcels of land. A "holding" must, in the second place, form the subject of a separate

of land. (*Rowland, J.*) SARA DIBYA v. GAURANGA CHARAN SAHU. 5 C.L.T. 41

—Ss 2(21) and 74—*Holder of tanks, bahal land—If tenant—Sub-proprietor—Position of*

The holder of a tank, bahal land is not only a sub-proprietor within the meaning of S. 3(21) of the Orissa Tenancy Act, but is also a tenant for purposes of S. 74 of the Act. What the sub-proprietor pays kist by kist to the proprietor is rent and he is therefore a tenant. He holds land under the proprietor and is liable to pay rent for it to the proprietor, which are the distinctive characteristics of tenancy. (*Harris, C. J.* and *Rowland, J.*) SIDHAKAMAL RAMANUJ DAS v. BATAKRISHNA MAHAPATRA. 18 Pat. 204 = 183 I.C. 428 =

12 R.P. 150 = 5 B.R. 935 = 5 C.L.T. 10 =
1939 P.W.N. 37 = A.I.R. 1939 Pat. 402

—Ss 127 and 141—*Scope and operation—Final publication of rent roll—Failure to appeal under S. 125 or to sue under S. 126—Effect of—Suit for declaration more than a year later—Declaration that land was of a different character from that entered in rent*

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Act
can of course be entertained and a declaration can be had that the tenancy is of a different class from that shown in the Record of Rights, but such a declaration does not displace the irrebuttable presumption of correctness of the rent entered in the rent roll, unless it can be challenged on the ground of want of jurisdiction. Failure to appeal under S. 125 or to sue under S. 126

OUDH ESTATES ACT (1869), S. 11.

brings S. 127 into operation, and the operation of S. 127 is not affected by the result of a suit brought by the tenant more than a year after the final publication of the rent roll in which he obtains a declaration that the land is of a character different from that entered in the Record of Rights. (*Harris, C. J.* and *Rowland, J.*) SIDHAKAMAL RAMANUJ DAS v. BATAKRISHNA MAHAPATRA. 18 Pat. 204 = 183 I.C. 428 =

12 R.P. 150 = 5 B.R. 935 = 5 C.L.T. 10 =
1939 P.W.N. 37 = A.I.R. 1939 Pat. 402.

OUDH COURTS ACT (IV OF 1925), S. 12—*Right of appeal to the Chief Court—If affected by C. P. Code, S. 109 and 110—*

COURT, HOW
I.R. (P.C.) 76 =
P.O. 122 (P.C.).

869)—*Effect of*
it for himself

and others—*Subsequent granting of sanad—Entry in list—Rights of those others.*

The general principle appears to be that if the settlement was made by a government with a certain person and he was in fact holding the estate for himself and others which others had a right in that property, their right continued even if a Sanad was granted to this one of

127 =
adh 17.

—*Effect on primogeniture sanad*

by the Oudh
NATH SINGH v.
178 I.C. 950 =
11 E.O. 127 =
t. 1939 Oudh 17.
spect of—Widow

beir of a taluq-dari house, she has no right to dismantle it without replacing it, for the estate cannot be deprived of that house which is an appurtenance to it. If she has reconstructed it, irrespective of the extent of it, it must be held to be the original house, which must go with the estate. This does not apply to a house newly built by her with the money which was hers to dispose of as she pleased. (*Hamilton, J.*) JADUNATH SINGH v. BISHU SHAR SINGH. 178 I.C. 950 =
1938 O.W.N. 1267 = 1939 O.A. 2-11 E.O. 127 =
A.I.R. 1939 Oudh 17.

—Ss 11 and 12—*Scope of—Gift in favour of unborn person—How affected—Importation of other restrictions—Creation by will of three life estates with power to appoint next heir by last legate—Validity—Nature of estate taken—Obscure condition—Effect of.*

S. 11 read with S. 12 of the Oudh Estates Act constitutes the whole law of testamentary succession so far as the Oudh Taluqdars are concerned. S. 11 gives very wide powers of testamentary disposition. S. 12 restricts that power so far as perpetuity is concerned. Because this restriction is imposed, it does not mean that other restrictions follow because of what has been said in the Tagore case. Unless a testamentary disposition made under S. 11 comes within the prohibitions of S. 12, it remains valid. The Tagore case lays down exactly the same rule as S. 2, of course with this modification that whereas the Tagore case prohibits a gift to the unborn, S. 12 distinctly contemplates a gift to the unborn provided the unborn is in existence at the expiration of the period mentioned in S. 12. It is not a

ODDH LAWS ACT (1878), S 7

condition precedent to the validity of a gift that the testator must actually know the donee. Where three successive life estates were created by will with a power to the last legatee to appoint an heir after him whom he considers fit and the line of successors was stated to be according to this very rule, it was held that it was a perfectly good bequest because the person to be appointed would be in existence at the expiration of the period mentioned in S 12. The giving of a power of appointment of heir is valid.

Held, further, that the condition as to continuance of line in the same manner was an obscure condition and could not be read as a restriction reducing the absolute estate to a life estate. (*Thomas, J.*) **ALI RAZA KHAN v NAWAZISH ALI KHAN**

Past mesne profits do not come within S 7 of the Oudh Laws Act and hence are not preemptible (*Hamilton and Srivastava J.*) **ABDUL HAFIZ v MANOHAR LAL** 183 IC 604-12 EO 44=

1939 O W N 736=1939 O A 583=
1939 A W R (CC) 111=1939 R D 455=
1939 O L R 537=AIR 1939 Oudh 233

—S 7—Proprietary and under proprietary village community—Right of pre-emption—Single individual if can constitute village community—Presumption under S 7—When can arise

The proprietary village community in any particular village is something quite separate from the under proprietary village community in the same village. While an under proprietor had no right to pre-empt a transfer of proprietary tenure his right to pre-empt a transfer of under proprietary tenure can arise only if he was a member of an under proprietary village community within the meaning of S 7 of the Oudh Laws Act. A single person cannot constitute such a community.

that village in respect of a transfer of an under proprietary tenure (*Hamilton and Yorke, J.*) **RAM PRASAD v RAM BHAROSEY** 14 Luck 422=179 IC 787

11 EO 206=1939 O A 190=1939 O L R 80=
1939 O W N 140=AIR 1939 Oudh 193

—S 9—Drawing of lots—Stage

Determination by lot arises according to Oudh Laws Act only when two or more persons are equally entitled to redeem or purchase the land. Hence unless that position has arisen in the case on a consideration of the evidence in a particular case, the Court has no power to draw lots. (*Radha Krishna J.*) **CHHEDI SINGH v GAYA DIN SINGH** 184 IC 874=1939 O L R 679=1939 A W R (CC) 255=1939 O W N 982 1939 O A 780

ODDH RENT ACT (XXII OF 1886) S 5—Creation of occupancy rights under subsequent decree of settlement Court—Effect—Transfer of such occupancy rights—Validity

Where once occupancy rights have been created by the fulfilment of the necessary conditions a subsequent settlement Court decree could not confer a right which is already there. A transfer of such rights though after the decree is invalid for under S 5 of the Oudh Laws Act said decree (*Hamilton and Srivastava J.*) **RADHIKA DUTT**

ODDH RENT ACT (1886) S 52

1939 O L R 107=1939 R D 97=1939 O A 241=
1939 O W N 186=AIR 1939 Oudh 99

—Ss 21 and 131—Suit for possession of abandoned holding—Limitation—Starting point—Issue of notice under S 21—If extends period

Where a tenant moves into an adjoining district taking away with him all his means of cultivation and all his household effects the landlord is within his rights in treating the holding as abandoned and in giving it to a new tenant. According to S 131 of the Oudh Rent Act any suit for the recovery of a holding which has been treated by a landlord as abandoned shall be instituted within three months from the date on which the landlord entered upon the holding. The issue of a notice by the landlord under S 21 of the Oudh

and *Mehita J. M.*) **DEPUTY COMMISSIONER BAKA BANKI v BINDRA** 1939 R D 418 (2)=

1939 A W R (BR) 184
—S 30 A—Findings in proceedings under—Civil suit to declare order not affecting plaintiff—If barred by res judicata See C P CODE S 11—MISCELLANEOUS PROCEEDINGS 1939 O W N 89

—Ss 32 B and 108 (2)—Joining of two suits under—Appeal—Forum

Where a suit under S 32 B of the Oudh Rent Act for determination of rent is joined with a suit under S 108 (2) for arrears of rent, and appeal from the decision in such a suit would lie to an appellate revenue authority and not to the District Judge (*Hamilton and Krishna Srivastava J.*) **JAGESHAR PRASAD v LAL NARSINGH PRATAP BAHADUR SINGH**

181 IC 14=12 EO 80 (2) 1939 O W N 823=
1939 O A 684=1939 A W R (CC) 152=
1939 O L R 576=1939 R D 515=
AIR 1939 Oudh 278

Act is to allow
"cultural years
"harvests, S 48
"to enable him
"to *Mehita J. M.*)

NUDRA PRASAD IVARAIN SINGH v DALBHADUR 1939 A W R (BR) 178=1939 R D 412 (2)

—S 48—Sister—Position of—Sharing in cultivation when possible

A sister is a collateral and as such unless she had

words the sharing must be a real and a personal one. The mere fact that the husband of the sister took part in the physical cultivation of the brother's land could not in law make his wife a sharer in the cultivation (*H*)

—S 52—Execution of decree for ejectment—Limits of Court's power to refuse—Granting of time to pay—Priority

Where a decree for ejectment has been passed without any condition there is no inherent right in the Assistant Collector to refuse to execute the decree. But where the

ODDH RENT ACT (1936), S. 56.

time to pay the balance on production of a cash payment is nothing wrong (*Mekta, J.M.*). **RAFIQ MOHAMMAD KHAN v KUMAR CHAND** 1939 R.D. 161 = 1933 O.W.N. 279 = 1939 A.W.R. (B.R.) 195 —S 56 (1) (d)—Service of notice—Objection—Shifting of onus.

Where endorsements are made on the processes that the defendants though found in the village refused to take delivery of the notices and they are signed by two attesting witnesses, if the objectors deny the correctness of the endorsements the burden is shifted on to the

for ejectment.

An application under S 60 of the Ouddh Rent Act, by a landlord for assistance to eject, is not a suit for ejectment. (*Darling, S.M. and Mekta, J.M.*) **RAM SHANKAR v. JIVA LAL.** 1938 R.D. 928 = 1939 A.W.R. (B.R.) 63.

—S 60—Irregularity in proceedings under—Remedy—Resistance at correction of papers stage—Pro frity.

If any irregularity is committed with reference to proceedings under S. 60 of the Ouddh Rent Act and orders passed *ex parte*, the aggrieved party can either get it reviewed set aside or take action under S 60 (2) of the Act. Where delivery of possession has been made, it is too late to resist the change in the papers on the basis of the delivery. (*Mekta J.M.*) **BAIJNATH v RAM ASREV.** 1939 R.D. 218 = 1933 O.W.N. 389 = 1939 A.W.R. (B.R.) 76 = 1939 A.L.J. (Supp.) 70.

—S 67 (1) (b)—Purchase of under proprietary right before Amendment Act (1921)—Mutation—Right to a portion in dispute—Effect on accrual of statutory rights.

Where mutation with regard to the purchase of under proprietary right under sale prior to the Amendment

possession, under S 67 (1) (b) statutory rights will not accrue. It does not matter if title to a portion of the under proprietary right sold was still in dispute. Where the title as regards a portion however small is undisputed in which the under proprietary right has been held, if the right was enjoyed. Act came into force, S 67 (bar to the accrual of statute and *Harper, J.M.*) **RAM ! BALI SINGH.**

—S 106—Complaint to higher tribunal and transfer to proper tribunal—Legality

Unless it was a daint of big property valued over 100 Rs the Court seized of a complaint under S 1 Ouddh Rent Act, would not act if the Assistant Collector second class. Where in such a case it is presented Assistant Collector first class and he refers it to proper Court there is nothing illegal in it, for

—S. 107 (1)—Favourable rate of rent—What amounts to—Ejectment—Procedure

The low character of rent may be accidental. So the mere fact of low rent does not raise a presumption that the land is held at a favourable rate of rent. But

ODDH RENT ACT (1886), S. 108

where there is evidence to show that the rent when fixed was deliberately kept below the limit of the revenue assessable on that area, then, it is, that it is held at 'a favourable rate'. To such a case ejectment by notice does not lie and the proper chapter to proceed under is the resumption chapter (*Mekta, S.M.*) **MAHESHWAR DAYAL v MT. GENDA.** 1939 A.W.R. (B.R.) 12 = 1939 R.D. 304.

—S. 108 (2)—Claim for haq-i-malikana—Right to interest

Where a superior proprietor in Ouddh sues his under-proprietor for recovery of a certain amount as haq-i-malikana, the amount claimed is undoubtedly 'rent' as defined in the Ouddh Rent Act and as such the superior proprietor is entitled to interest on the rent claimed. (*Zia ul Hasan, J.*) **BRAHMA DIN v SANGAM LAL.** 179 I.C. 1 = 11 R.O. 160 = 1939 O.A. 108 = 1939 O.L.R. 33 = 1938 O.W.N. 1368 = 1938 A.W.R. (O.C.) 145 = 1939 R.D. 50 = 14 Luck 467 = A.I.R. 1939 Ouddh 57.

—Ss. 108 (2) and 132—Suit to enforce under proprietor's liability to superior proprietor—Limitation

From a consideration of the definitions of 'rent', 'under-proprietor' and 'landlord' in the Ouddh Rent Act it is clear that what an under-proprietor is liable to pay to the superior proprietor is 'rent' and a suit for its recovery could be brought according to S 108 (2) of the Act only in the Revenue Courts and the limitation for such a suit is three years as provided by S 132 of the same Act. (*Zia ul Hasan, J.*) **BRAHMA DIN v SANGAM LAL.** 179 I.C. 1 = 11 R.O. 160 = 1939 O.A. 108 = 1938 O.W.N. 1368 = 1938 A.W.R. (O.C.) 145 = 1939 O.L.R. 33 = 1939 R.D. 50 = 14 Luck 467 = A.I.R. 1939 Ouddh 57.

—Ss 108 (7) and (9) and 119—Suit claiming reliefs under S 108 (7) and (9)—Appeal—Forum.

Where reliefs under S 108 (7) and (9) of the Ouddh Rent Act are asked for in a suit, it is not *in toto* one under S 108 (9) and hence an appeal against the order of the Civil Court but to the and *Srinivasa, J.J.*) 1939 O.W.N. 749 = 1939 A.W.R. (O.C.) 119 = 1939 O.L.R. 517 = 1939 R.D. 463 = A.I.R. 1939 Ouddh 239.

—S 108 (10)—Applicability—'Landlord' meaning of—Wrongful dispossession by one of the proprietors—

108 (10)—Suit to recover statutory holding—relinquishment—Dismissal by trial Court—owner finding relinquishment not acted upon—appeal—Interference

Where a suit under S. 108 (10) of the Ouddh Rent Act for the recovery of a statutory holding is resisted on ground of a formal relinquishment by the plaintiff and it is dismissed by the trial Court but decreed on a the Commissioner who found as a fact that

landlord of the tenant is the person or persons to whom the rent is payable by the tenant. Where the tenant has been wrongfully dispossessed by one of the proprie-

108 (10)—Suit to recover statutory holding—relinquishment—Dismissal by trial Court—owner finding relinquishment not acted upon—appeal—Interference

Where a suit under S. 108 (10) of the Ouddh Rent Act for the recovery of a statutory holding is resisted on ground of a formal relinquishment by the plaintiff and it is dismissed by the trial Court but decreed on a the Commissioner who found as a fact that

Where a suit under S. 108 (10) of the Ouddh Rent Act for the recovery of a statutory holding is resisted on ground of a formal relinquishment by the plaintiff and it is dismissed by the trial Court but decreed on a the Commissioner who found as a fact that

ODDH RENT ACT (1886) S 108

quishment was not acted upon, on second appeal to the Board it was

Held (per Darling, S. M.) that the fact of the Zamindars being in possession was enough proof of the relinquishment having been acted upon and that the suit should be dismissed

Held (per Mehta J M.) that the finding of the commissioner that the relinquishment was not given effect to and that there was no actual giving up of possession is one of fact, and it would not be in order to interfere with it in second appeal (*Darling, S M and Mehta, J M*) **SAHEB BUX SINGH v DEOKALI BARAI**
1938 O W N 1351=1938 R D 931=
1939 A W R (B R) 64

—S 108 (10)—*Suit under—Facts to be proved by plaintiff*

When a plaintiff brings a suit under S 108 (10) of the Odh Rent Act for restoration of possession he should establish that he lost possession which he had from the date of the lease (*Harper, J M*) **RAM DAS SINGH v UDIT NARAIN SINGH**
1939 A W R (B R) 37=1939 O W N 325=
1939 R D 179=1939 A L J (Supp) 53

—S 108 (10)—*Su A under—Maintainability—Tenancy extinguished by abandonment*

When once the Court finds that the tenancy was

claim for collection charge—Percentage if any

There is no rule of law fixing the maximum limit of the amount of expenses to be allowed to a lambardar for collection of rents. Though ten per cent may be taken as a standard in cases where no accounts are proved, it cannot be laid down that even in cases where actual collection expenses are proved nothing more than ten per cent co
f) SYED SAROOP

1939 O A

—S 124 (c) and (d)—*Civil suit if excess revenue paid—Dismissal owing to ability—Appeal—Procedure to be followed Court*

Where a suit filed in the Civil Court excess revenue paid is dismissed as not being payable in that Court and an appeal is preferred the provisions of S 124 (c) and (d) of the Odh Rent Act apply to it and where there are no materials on the record necessary for the determination of the suit, the proper

Where the defendant sets up a *bona fide* claim of title or when adverse propri is claimed by the defendant such claim appears to be treated as coming under Act (*Zia ul Hasan J*)

DATT 179 IC 958=1939 R D 99=
1939 O L E 99=11 R O 217=1939 O A 212=
1939 O W N 171=A I R 1939 Oudh 106

PARDANASHIN LADY

—S 131—*Suit for possession of abandoned holding—Limitation—Starting point* See OUDH RENT ACT SS 21 AND 131 1939 R D 418 (2).

PARDANASHIN LADY—Adverse possession against —Court's duty to rely on facts and not presumptions See ADVERSE POSSESSION—PARDANASHIN

I L R (1939) Kar 597.
—*Deed by—Assumption of liability for husband's debts—Ignorance of true position—Extent of liability*

Where the High Court held that with reference to certain mortgage deeds executed by a pardanashin lady, the assumption by her of liability for her husband's debts was made without full knowledge of the true position (though no fraud was practised on her) and as such she was not liable for sums not received by her personally, their Lordships of the Privy Council said that they were unable to say that such a view was wrong or unreasonable (*Sir George Rankin*) **LACHHMESWAR SAHAI v MOTI RANI KUNWAR**

I L R (1939) Kar 274=181 IC 359=
43 O W N 729=41 Bom L R 1068=
20 Pat L T 821=1939 O L R 338=5 B R 651=
1939 O W N 553=11 R P C 246=50 L W 19=
1939 A L J 473=1939 M W N 671=
1939 O A 548=1939 A W R (P C) 95=
A I R 1939 P C 157 (P C)

—*Deed by—Burden of proof*

protection is given to a parda s generally a person over whom acquired and so she is likely to ealings For this reason it is are seeking to enforce agree ments executed by such a lady to prove that she understood the substance of what she was agreeing to (*Young C J and Ram Lall J*) **UMRAO BEGUM v RAHMAT ILLAHI** I L R (1939) Lah 433=
41 P L R 843=A I R 1939 Lah 439

—*Deed by—Burden of proof—Compromise by authorized agent—Validity—Proof of lady's knowledge*

—*Deed by—Burden of proof—Plea of invalidity—When to be raised—Right of reversioners to raise plea in respect of deed by Hindu widow for first time in appeal before High Court or Privy Council*

—*Deed by—Burden of proof—Plea of invalidity—When to be raised—Right of reversioners to raise plea in respect of deed by Hindu widow for first time in appeal before High Court or Privy Council*

for first time in appeal to the High Court or in appeal before the Privy Council when they have not raised it in the written statement in the trial Court (*Lord*

PARDANASHIN LADY.

Porter.) JUGAL KISHORE NARAYAN SINGH v. CHAROO CHANDRA SUR. 1939 A W.R. (P.C.) 101 = 20 Pat L.T. 407 = 181 I.C. 341 = 5 B.B. 647 = 1939 P.W.N. 385 = 43 O.W.N. 758 =

AJ

Decd by—Rule as to burden of proof—Applicability to third parties.

The protection afforded by the Courts to pardanashin ladies in respect of transactions entered into by them is their personal privilege which can be claimed only by them or persons claiming through their title to any property affected by the transaction and not by a third party (*Faat Ali and Chatterji*).

SINGH v. TINCOURI BANKERJI.

5 B.B. 999 = 12 P.P. 195 =

Decd by—Validity—Onus

In the case of a pardanashin lady the law places a very heavy burden on those who found a claim on a document executed by her. Those who found upon the deed must show affirmatively and conclusively that the deed was not only executed by, but also understood by, and was really understood by, In such cases it must also, of course, be that the deed was not signed under duress from the free and independent will of the rule of law that a gift cannot stand unless it is proved that the lady had independent advice is not an absolute rule of law.

into two groups: one who seeks to enforce the deed as an absolute stranger and dealt with her at arm's length. In the former class of cases, the Court will act with great caution and will presume confidence influence exerted, in the latter class of cases, will require the confidence and influence to intrinsically. Where the person who seeks to lady to the terms of the deed stands towards her in a relation of personal confidence, a very heavy burden lies on those who rely on the document, heavier than what the law would ordinarily lay on a person who was a stranger to the pardanashin lady and who was dealing with her at arm's length.

Decd executed by—Precautions to be taken—Duty of Court.

In dealing with pardanashin ladies executed by them, it is necessary to warn them that what they are doing is not merely a legal act but a conscious act though it that such explanation should be proved to the court at the time of the execution. They must have independent advice and the Courts have to scrutinize the transaction very closely to see that it is a fair one. But if it comes to the conclusion that the transaction is not a

PARTITION.

hand to the paper but also that she has put her mind to the transaction. At the instance of the sons, the mother and daughter who were pardanashin Mahomedan ladies executed a mortgage deed along with sons but the consideration while the obligation. The dah screen mostly in had no independent

advice and the only person who explained the matter was the son. There was really nothing whatever to show that these women knew anything about the transaction.

Held, that it was one of those cases where even though the fact of execution and attestation were established the document would still be not binding on

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A.I.R. 1939 Nag. 159.

PARDON. See CR. P. CODE, SS 337-339.

PARENTAGE. See EVIDENCE ACT, S. 112.

PAROL EVIDENCE. See EVIDENCE ACT, SS. 91-100.

that the Revenue Court will carry out the partition, it only means that he has directed that the partition of is zamindari, will be

It is a regular pre- decree which need

OWAKRA PRASAD v.
1939 R.D. 127 =

1939 A.W.R. (B.R.) 146 (1)

Mode—Possession of parties

In partition cases, the rights and claims of each party

Partial partition—Rule against—Applicability—Tenants-in-common—Award creating rights in favour of parties in specific properties—Suit by one to enforce award—Non inclusion of all properties—If bar to maintainability of suit.

A suit for partition of common properties, and not joint properties, is not liable to be dismissed on the ground that the suit does not include all the common properties available for partition. In the case of tenants in common or in a case where an award has taken place between several persons, a person who files a suit to

which rights have been created in favour of the parties in specific properties, and it is not incumbent on a person to include in his suit all the properties which are awarded to him under the award (*Dwarika, J.*)

L.B. 170 =
Bom 114.

be distr-

only persons who in any way explained the matter to her were either the other side or persons who would endeavour to take advantage of her position, then one must most critically examine all the various steps that are taken and must be satisfied that she not only put her

But.
Where there has been a recent partition and *faisla* divided are almost equal, then it is usual to divide up the *shamlat* rateably between the two *faislas* and the *shamlat* is not utilised for making up slight discrepancy

PARTITION.

between the sharers of the actual area (*Marsh, S M and Mehla, J V*) *HIRA LAL v CHHABIRAJI*

1939 E D 329 = 1939 A W R (B R) 282

—Sut for—Previous partition for convenience of possession—If bars suit

A previous partition for convenience of possession by itself cannot stand in the way of a decree for partition so long as it is not found that it was in conformity with the shares of the respective parties 21 C W N 229 Rel on (*S K Ghose and Patterson JJ*) *SARAT CHANDRA CHATTOPADHYAYA v GANGA CHARAN CHAKRAVARTY* 43 C W N 181 = 69 C L J 527

PARTITION ACT (IV OF 1893) S 4—Application under—It can be made at a suit stage

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11 R A 614 (2 = 182 I O 55 =
1939 A W R (H O) 210 = 1939 A L J 166 =

A I R 1939 All 313

—S 4 (1)—Member of undivided family—Widow remarrying but continuing to live in the family house—Right to purchase share sold

Where a widow had though she continued to live in the family house status as a member of an undivided family house and as such is entitled share which might have been so

SHAFIAN BEGAM v KIFIATO

1939 A W R (H O) 616 = A I R 1939 All 640

PARTNERSHIP See also (1) C P CODE O 30

(2) PARTNERSHIP ACT

Accounts on dissolution

Contribution

Criminal breach of trust by partner of partnership property

Dissolution

Execution of decree against

Hindu family

Test of

Partnership Act (IX of 1932)

—Accounts on dissolution—Taking of—Illegal payments by partners by way of bribes—If to be excluded

Illegal payments made by the partners by way of bribes for the purpose of securing contracts for the partnership cannot be taken into account in taking accounts and as

PARTNERSHIP

CHHAGANLAL KALYANDAS v JAGJIWANDAS

41 Bom L R 1263

—Contribution—Joint decree passed against some of partners of firm in respect of debt contracted by them—One of judgment debtor's paying entire amount—Right to sue rest for contribution—Partnership debt and separate debt—Test

Where a creditor obtains a joint decree against some of the partners of a firm in respect of a partnership debt contracted by them one of the judgment debtors by paying the entire decretal amount is not entitled to sue his co judgment debtors alone for contribution in the absence of the other partners unless there are special circumstances Such special circumstances generally

account books of the firm showed that the loan was treated as an advance made by the creditor and not by

—Criminal breach of trust—Partner if can be guilty of See PENAL CODE, S 409 41 P L R 37
respect of
conviction—

9 Sind 21

—Dissolution—Covenant by partner to continue partnership and binding heirs and representatives—Enforceability against heirs and representatives after death of partner—Hindu father—Partnership with stranger—Covenant binding heirs to continue partners—Sons—Liability for loss incurred after father's death

A covenant by a deceased partner of a firm binding his heirs and representatives to continue the partnership cannot be specifically enforced against the heirs and representatives the effect of the death of the partner coupled with the refusal of the heirs and representatives

(*Leach C J and Krishnarwamy Aiyangar J*) *VEN KATACHELA CHETTIY v NATESA CHETTIY*

49 L W 705 = 1939 M W N 480 =

A I R 1939 Mad 670 = (1939) 1 M L J 905

—Accounts—Promissory note in favour of one partner by others as a result of adjustment of part of accounts—Suit on—Maintainability—General suit for accounts—If essential.

A partner of a firm to whom the executed a promissory note as a result of a part of the partnership account independent suit on the promisor obliged to bring a general suit for partnership (*Wadia and*

right and interest of the said partner and shall get the business done subjecting himself to the aforesaid terms and that on that account neither the partnership should be cancelled nor would it come to an end, and his sons after the death do not become partners or take part in the management of the business they cannot be made liable for any loss incurred by the partnership after their father's death as sons of the deceased father (*Wadia*

PARTNERSHIP.

Where the predominant intention of the executants of a deed of partnership is that the firm shall continue to carry on business without running the risk of dissolution at the instance of one of the partners who did not agree with the rest and wherein machinery is provided for the management of the business, the partner who did not agree with the rest has no right to bring a suit for dissolution of the partnership on the ground that the managing partner does not manage the business in a manner which may be profitable to the partners (*Bennet and Verma, Jf.*) **DROPADI v. BANKEY LAL.**

I L R (1939) All 577 = 184 I C 511 =
12 R A 243 = 1939 A W R (H C.) 367 =
1939 A L J 410 = A I E 1939 All 548.

—Execution of decree against—Grounds on which a partner may dispute liability under. See C. P. CODE, O 21, R 50 (2). 43 C.W.N. 997

—Hindu family—Partnership between divided members—Death of one of the partners—Continuation of partnership—Inference. See LIMITATION ACT, ART. 106—APPLICABILITY 1939 A W R (H C.) 146

—Test of—Right to participate in profits—If consistent—Intention and contract of parties.

Although a right to participate in the profits of trade is a strong test of partnership, and it may, in certain cases, be inferred from such participation alone, yet whether that relation does or does not exist must depend on the real intention and contract of the parties (1872) L R. 4 P C 419, Full. (*Fazl Ali, J.* on difference between *Manohar Lal and Chatterji, Jf.*) **MADHO PRASAD v. GOURI DUTT** 183 I C 179 (2) = 12 R P 101 (2) = 5 B R. 874 = 20 Pat L T 825 = A I E 1939 Pat. 323

PARTNERSHIP ACT (IX OF 1932), S. 4—“Partnership—Essentials of—Acting for all”—Effect of

There may be a partnership in a single transaction, and it is also clear that sharing profits and contributing to losses are indications of a partnership, but by themselves they are not enough to constitute a partnership. One essential element of a partnership is that there should be agency. The words “acting for all” in S. 4 of the Partnership Act were inserted to emphasize that partners are agents and not merely principals. One partner can always bind another partner in any matter which falls within the scope of the partnership business, subject to any limitation under S. 20 of the Act, and if the relationship constituted between parties in respect of a particular transaction does not expressly or by necessary implication involve the right of one party to pledge the credit of the other as an agent then there is no partnership (*Reaumont, C. J.* and *Kania, J.*) **CHIMAN RAM v. JAYANTILAL** 184 I C 397 = 12 R B 170 = 41

—Ss 4 Agreement to carry on business—Dismissal of partner—Sharing of profits and losses—If constitutes partnership.

In determining whether certain persons are partners or not, regard must be had to the real relation between them as shown by all the relevant facts taken together. A provision for sharing of profits and losses in equal shares as well as for taking into consideration costs incurred in maintaining a staff in determining the profits or losses incurred in the business is, no doubt, consistent with the existence of a partnership, but it is not conclusive in

PARTNERSHIP ACT (1932), S. 68

determining whether the parties are partners or not. Where an agreement between the plaintiff and the defendant recites that the latter appointed the former to deal in certain commodities, and confers on the defendant power to dismiss the plaintiff for mismanagement of the business, this is not conclusive evidence of partnership.

—S 11—Construction—“Subject to the provisions of the Act” meaning of—Intention of the Legislature

The opening words of S. 11 of the Partnership Act “subject to the provisions of this Act” mean that the relation of partners shall be governed by contract unless the contract that they enter into is one which is prohibited by any provision in the Act. S. 11 has deliberately been so worded by the Legislature as to make it clear that the relationship of the partners shall be determined by the contract between them, subject of course to the provisions of the Act. (*Bennet and Verma, Jf.*) **DROPADI v. BANKEY LAL.**

I L R (1939) All 577 = 184 I C 511 = 12 R A. 243 = 1939 A W R (H C.) 367 = 1939 A L J 410 = A I E 1939 All 548

—Ss 22 and 25—Surety letter by managing partner—Construction—Liability of other partners

A managing partner of a firm gave surety, and the letter under which the surety was given read as follows: “Please accept the salutations of Rajab Ali Muhammadali. This is to write to you that please keep a khata of the goods of Rs. 200, in words two hundred rupees, of Adam Ali Nazir Ali of mouza Surpur. The responsibility for Rs. 270 is ours. Sambat 1945, muthi Kartak Sudhi 3, Thursday, dated 15th November, 1928. Rajab Ali Muhammad Ali by the pen of Fajli Hussain.”

Held, that the executant clearly purported to act on behalf of the firm. The act had been done so as to bind the firm in the manner mentioned in S. 22, Partnership Act. The other partners were therefore liable under S. 25 of the Act (*Gruer, J.*) **SUWALAI v. FAZLE HUSSAIN** 179 I C 771 = 11 R N 317 = 1939 N L J 80 = A I E 1939 Nag 31.

—S 68—Entry in register as to place of business—Evidentiary value.

A suit for dissolution of a partnership firm was instituted in Calcutta after obtaining leave under Cl. 12 of the Letters Patent. The defendants filed an application for revocation of the leave and alternatively for stay of the suit. They alleged that the Court had no jurisdiction to try the suit as no part of the cause of action arose within such jurisdiction, the business having been carried on at Bantva. In the Register kept under S. 68 of the Partnership Act it was stated that all the parties were

of business of the of S 68 of the (Sf.) whether the entry in the Register did not represent the real state of things but that in any case for the purpose of the interlocutory application the register was sufficient evidence to establish that there was a partnership business that the plaintiff and the defendants were all partners in that business that the principal place of business of the firm was at Calcutta, and that, therefore, the Court had jurisdiction to try the suit for dissolution of that partnership firm. (*Sen, J.*) **ALI MAHOMED EBRAHIM**

PARTNERSHIP ACT (1932), S 69

SHAKOOR v ADAM HAJEE PEER MOHAMED ESSACK

I L R (1939) 2 Cal 199

—S 69—*Applicability—Mahomedan sons inheriting father's business—Minority of some—If a partnership requiring registration*

Where after the death of a Mahomedan his sons carry on the business and some of them are minors it is a partnership requiring registration. The contract of partnership may be implied and though minors could

S 69, prevents a Court from taking cognizance of a suit brought by an unregistered firm, in the same way a Court shall not take cognizance of a suit barred by limitation, and to hold that because as the result of ignorance or mistake objection was not taken by the defendant in the suit so the provisions of the law could be flouted would be to frustrate the intention of the Legislature clearly expressed. Therefore the Judge is

12 R S 88 = A I R 1939 Sind 206

—S 69—*Registration after disposal of suit—Effect*

Where a suit by a firm has been disposed of on the ground that owing to non-registration the suit is not maintainable the subsequent registration cannot validate the proceedings and entitle an appellate Court to look into the merits of the case. If registration had been

—Ss 69 and 74—*Scope—Suit after coming into force of S 69 to enforce right accruing before by unregistered firm—Maintainability—If saved by S 74*

The effect of S 74 is that the Act is not to affect

apply to legal proceedings to enforce any subsisting rights which are saved by cl (c) of S 74. Sub clis (a) and (c) of S 74 save existing rights and Sub cl (b) saves any legal proceeding or remedy in respect of such rights. S 74 (b) deals with procedure and nothing else, that is to say, it deals with methods of enforcing rights and not with the rights themselves. (*Beaumont C J and Sen J*) REVAPPA v BABU SIDAPPA

I L R (1939) Bom 104 = 179 I C 832 =

11 R B 267 = 40 Bom L R 1275 =

A I R 1939 Bom 61

—Ss 69 and 48—*Unregistered firm—Suit for dissolution and account—Decree that could be passed*

In a suit for dissolution of partnership and for accounts in respect of an unregistered firm, while the

PARTNERSHIP ACT (1932), S 69

prayer for dissolution could be decreed, the plaintiff cannot obtain a decree for rendition of accounts against the defendant because, the decree to be granted under O 20 R 15, C P Code, must be modified in accordance with the provisions of law in S 69 of the Partnership Act. But the prayer that an account be taken may be granted in the limited terms of S 48, that is to say the decree in question will be under O 20, R 15 and Form No 21 of Appendix D and if the plaintiff desires

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563 =
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535.

—Ss 69 (2) and 74—*Applicability and scope—Suit by unregistered firm on cause of action arising prior to Act—Registration of firm pending suit—Effect*

—*Suit—If saved by S 74*

S 74 of the Partnership Act which saves rights and remedies which existed before the Act came into force should not be read as being subordinate to S 69 (2), but should prevail over S 69 (2). The rights and remedies which accrued before the commencement of the Act are left entirely untouched. S 74 is a saving section and if effect is to be given to the words used, S 69 (2) cannot apply in a case where a suit is filed by a firm which had not been registered but whose registration is effected during the pendency of the suit, when the suit is in respect of a liability arising prior to the Act. S 69 does not bar such a suit. (*Leach C J and Patanjali Sastri*) AIYAR

S 69 (2)—*Scope—Mandatory character of—unregistered firm—Maintainability—Registration of suit—Sufficient to cure defect*

provisions of S 69 (2) of the Partnership Act are imperative and a plaint filed by an unregistered firm is in effect no plaint at all. A suit which is not maintainable by reason of non compliance with the section

at the date of the institution of the suit the suit must

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Act does not contemplate an execution proceeding. The fact that the decree in question was a consent decree cannot make a difference in a case where the decree holder does not repudiate the compromise but only questions the right of the decree holder to execute the decree. In such a case neither was the execution proceeding meant to enforce a right arising from the contract nor was the objection of judgment debtor directed against its validity. So S 69 (3) of the Act cannot come into play. (*Niyogi, J*) JAMAL USMAN v UMAR HAJI KARIM 1939 N L J 148

—S 69 (3) (a)—*Unregistered firm—Member if can sue for dissolution and accounts*

The right of a partner of an unregistered firm to sue and obtain a decree for dissolution and accounts remain

PARTNERSHIP ACT (1932), S. 74.

unaffected by the provisions of S. 69 of the Partnership Act, in view of the proviso contained in sub S. 74 thereof. (*Thom, C.J., Allsup and SHIBBA MAL v. GULAB RAI.*)

1939 A.W.E. (H.C.) 832-1

A.I.R. 1939

—S. 74—Construction and scope of—suit by un-

—S. 74—Scope and effect of—Suit by unregistered firm for rent due before October, 1933—If saved.

S. 74 not only saves the rights but also the suits to enforce these rights. There is no reason to restrict S. 74 by saying that it covers only a right not depend-

(2) EVIDENCE ACT, S. 115

PASSING OFF. See TRADE MARK—PASSING OFF
PATENT—Disclaimer—Filing of—Effect—Patents

ected by the Letters Patent is the invention, the des-

matter of patent

It is of course true that a Patent may be granted for a combination which is one producing a new result, or arriving at an old result in a better or cheaper way or giving a useful choice of means but different considerations are applicable to each of these cases in order to arrive at a conclusion as to whether "subject matter" in any particular fact that the result is new is of itself evidence of invention, and if it has make modifications in the form or of any of the separate old integers included in the combination in order to ensure their more perfect interaction, there is a strong presumption that there has been invention. It is immaterial whether the "invention" comes into existence by accident or by design, but on the other hand there must have been some inventive step even though the inventive step is but slight. Otherwise the patent is invalid for want of (*Costello and Panbridge, JJ.*)

NIER v. GEORGE REINHART.
—S 26—Order granting revoca
Appeal See LETTERS PATENT (CA

43 C.W.N. 697

—S 26 (1) (b)—Invention which can be subject matter of Patent. See PATENT AND DESIGNS ACT, S. 2 (8) AND (10)

43 C.W.N. 697.

PATNA HIGH COURT RULES, B. 23.

—S 26 (1) (b)—Revocation proceedings—Pats.

invention and thus, in effect, to raise the whole question as one of subject matter. (*Costello and Panbridge, JJ.*) **ERNEST BRUNO NIER v. GEORGE REINHART.**

43 C.W.N. 697.

—S 26 (2) (b)—Petition for revocation of patent
—Locus standi to present—Petitioner, if confined to grounds giving him his locus

A bona fide and substantial allegation of any of the grounds specified in S 26 (2) (b) of the Patents and Designs Act would be sufficient to give a petitioner an

HIGH COURT RULES AND ORDERS (ORIGINAL SIDE), CH 36, ITEM 5

43 C.W.N. 697.

—S 53 (1)—Construction—"Fraudulent or obvious imitation"—Right to relief on ground of infringement—be exact copy or

title a plaintiff to
t of copyright in
ould be an exact
red design. The
words "fraudulent or obvious imitation" ought not to be construed as meaning exact reproduction (*Semtee, J.*)

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foreign

country—Right of suit

Under S. 53 (1) (a) of the Patents and Designs Act it is not the application that has to be fraudulent, but the imitation should be considered as "fraudulent or obvious" or not. A person is entitled to sue the infringer

41 Bom.L.E. 45=A.I.R. 1939 Bom. 103.

—S 53 (2) (a) and (b)—Scope—If exhaustive—Power of Court to order delivery up of goods to plaintiff for destruction

The equitable remedies in respect of an infringement of a design are not excluded by the statute and in a infringement, the plaintiff for delivery up of the mark to him for destruction
PRINTERS ASSOCIATION,

181 I.C. 547=

12 R.B. 338=41 Bom.L.E. 45=

A.I.R. 1939 B. 03.

PATNA HIGH COURT RULES, Part

IX, B. 23—Appeal dismissed under—

PATTI

Remedy of appellant—Inherent power of Court. See
C P CODE S 151 1939 P W N 832—
A I R 1939 Pat 678 (F B)

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1939 M L R 213 (Civ)

PENAL CODE (XLV OF 1860) S 17—Ministry of
provin — If part of executive Government

The ministry of a province cannot be said to form a
part of the executive Government of the province in
the sense implied by S 17 I P Code (Derbyshire, C
J Naum Ali and Rau J) EMPEROR v HEMEN
DRA PROSAD I L R (1939 2 Cal 411 =

183 IC 349 = 12 R C 153 = 69 C L J 599 =

2 Fed L J (Part II) 55 = 40 Cr L J 782 =

43 C W N 950 = A I R 1939 Cal 529 (S B)

—Ss 21 and 353—Public servant—Panchayat
Board—Sanitary Inspector of—If public servant—
Obstruction to—Offence

The Sanitary Inspector of a Panchayat Board is not
a public servant as defined by S 21 I P Code the
fact that he is authorised by the President of the
Panchayat Board to collect fees for sealing animals
before slaughter would not make him a public servant
so as to sustain a charge under S 353 I P Code
against a person obstructing him (Lakshmana Rao, J)
SUBRAMANIAM PILLAI v IONNAVVA

183 IC 660 12 R M 330 = 1939 M W N 469 =

40 Cr L J 822 (2) = 49 L W 546 =

A I R 1939 Mad 569 (1939) 1 M L J 729

—S 33—Act—Death caused by combined effect
of two acts closely following upon and connected with
each other—Original intention to cause death—Acts if
separable and to be ascribed to separate intentions—
Offence See PENAL CODE S 302 18 Pa

—S 31—Applicability—Motive—Question
material

In a case where there is direct evidence of the acts of

183 IC 491 = 12 R P 162 20 Pat L T 802 =

40 Cr L J 786 = 1939 P W N 353

A I R 1939 Pat 443

—Ss 34 and 120 A—Distinction between
INDIAN PENAL CODE Ss 120 A AND 34

1939 N L J 3

—S 34—Interpretation See PENAL CODE Ss
299, 301 AND 325 1939 O W N

—Ss 34 299, 301 and 325—Attack by several—
Single blow by lathi causing death—Other ordinary
injuries—Absence of intention to cause death—Offence
made out—S 34, interpretation—Considerations to be
borne in mind

Where the death of a person is caused by the single
blow of a lathi in the course of an attack on him by
several persons and the other injuries on the dead per

son bodily injury as is likely to cause death But it may be
held in such a case that death was caused by the doing

PENAL CODE (1860), S 75

cation of S 34 I P Code, to convict any of assail
ants under the second part of S 34 The appropriate
section would, in view of the language of S 34 seem to
be S 325 I P Code In interpreting S 34, I P Code it
must be borne in mind that the essential question in such
cases is what was the common intention and that the
common intention must be to commit the offence
actually committed (Ziaul Hasan and Yorke J)
ZAHID KHAN v EMPEROR 14 Luck 378 =

179 IC 838 = 11 E O 163 = 40 Cr L J 187 =

1939 O W N 7 = 1939 A W R (CC) 27 =

1939 A Cr O 3 = 1939 O L R 22 =

1939 O A 157 = A I R 1939 Oudh 49.

—Ss 34 299 and 300—Number of assailants in
flinging lathi blows on deceased—Assailant dealing fatal
blow not having intention, but knowledge specified in
Ss 299 and 300—Liability of all for murder

When a number of assailants inflict lathi blows on
one person on some of which blows are fatal and some of
which are not the first thing to do is to see whether the
assailant who has inflicted the fatal blow is guilty of
murder or not The common intention referred to in
S 34, Indian Penal Code is an intention shared by the
person who has caused death and by the other assailants
who did not themselves cause death If the attack which
caused death is neither murder nor culpable homicide
because the person who dealt that blow did not have
such intention as is specified under S 299 or 300 I P
Code but only the knowledge which is specified in either
of these two sections there is no intention which can be
shared by all the assailants who did not strike the fatal
blow and therefore S 34 cannot apply The knowledge
referred to in Ss 299 and 300 is personal knowledge of
the person who struck the blow and it is difficult to see
how it can be shared by his co-assailants but in any
case S 34 is restricted to common intention and does

(Milton J) SUN ER

1939 O W N 576 =

1939 O L R 389 =

315 = 12 R O 12 =

40 Cr L J 722 = A I R 1939 Oudh 207

S 71—Applicability—Conviction for offence
S 147 also for offence under S 325 read
149—Infliction of separate sentences—Legality
of the accused are convicted under S 147 I P
Code and also under S 325 read with S 149 I P
Code and separate sentences are awarded such an in
fiction is not illegal on the ground that the offence

1939 O L R 40 = A I R 1939 Oudh 91

—S 71—House breaking and theft—Separate
sentences—Legality See C R P CODE S 35

A I R 1939 Sind 76

—S 71—Offence punishable under two sections—
Procedure for conviction and sentence

Where a person is found guilty of a criminal act
which is punishable under two different sections of the
code under both the sec-
under that section
naly (Lokur J)
41 Bom L R 980 =
A I R 1939 Bom 452

—S 75—Applicability—Conditions—Attempt to
Sufficiency
of falling under
it to bring into
(Davis, J C)

PENAL CODE (1860), S. 84.

EMPEROR v. RAMZAN GHULAM HYDER.

I L R (1939) Kar. 676 = 183 I C 602 (2) =
12 R S 61 = 40 Cr L J. 816 (2) =

Unsoundness of mind need not necessarily make a person incapable of understanding the nature of all his acts. It may be such that in respect of certain matters

Clerk from parties. He was convicted by the Sub Divisional Magistrate, and his appeal to the Sessions Judge was dismissed. The defence was that the petitioner was practically insane during the time in question when the offence was committed, that he was generally subject to fits of insanity, acting like a mad man and being violent in conduct, etc. The evidence established beyond doubt that he was not in a normal state of mind. On the evidence the conclusion was irresistible that the petitioner was really unable to form the criminal intention that was attributed to him, namely, of causing wrongful loss or wrongful gain. He was in such a mental condition that he could not have understood that what he was doing was wrongful at the time. The lower Courts held that his case did not come under S. 84 I. P. Code, but they did not consider whether apart from S. 84, the state of mind of the petitioner did not exclude the existence of a dishonest intention, which is an essential ingredient of the offence of criminal breach of trust.

Held that S. 84, I. P. Code, applied only to cases of intoxication and did not cover a case like the present where what was alleged was an inherent defect or infirmity.

excluded and therefore the petitioner could not be convicted of the offence (*Pantrang R v. J.*) G J JOSSEPH
In re I L R (1939) Mad 353 = 182 I C 228 =
12 R M 25 = 40 Cr L J 642 = 49 L W 160 =
1939 M W N 126 = A I R 1939 Mad 407
(1939) 1 M T J 955

—S. 84—Applicability—Unsoundness of mind—Plea of—Burden of proof—A case aware nature of act though under a hallucination—Influence of evil spirits—If protected

A person who sets up unsoundness of mind in answer to a charge of a criminal offence must show that he was not able at the time to understand the nature of the act or that he was doing anything wrong. The fact that the accused at the time of the offence was probably off his mind or under some hallucination or under the

—S. 84—Legal insanity—What is.

An accused person cannot be exonerated under S. 84, I. P. Code, if he knew that he had done something wrong, however insane he might be, from the medical

PENAL CODE (1860), S. 99.

point of view. Where the facts are that the accused after the murder attempted to conceal the evidence of the murder by washing his hands in the sand, that on the

A I R 1939 Lah 355.

—S. 96—Applicability—Accused party trying to

reinforced by others from their village. They followed the accused party advancing in the water, threw stones and brick bats at the accused party, causing grievous hurt to two of the accused party, and continued to advance with lathis. The appellant of accused party fired shots with a shot gun, which took effect on three persons of the *Attir* party, one of whom died, another received grievous hurt and the third simple hurt.

Held, that the appellant's action was done in exercise of the right of private defence and was within the general exception in S. 96 I. P. Code. (*Mahomed Noor and Rowland, JJ.*) AJAB NARAIN SINGH v. EMPEROR

5 B R. 679 = 181 I C 811 =
11 R P 641 = 40 Cr L J. 611 = 1939 P W N 671 =
A I R 1939 Pat 575

—S. 97—Right of private defence—Duty of Court.

When the accused party is shy of giving the exceptions, if the court adopts that of the complainant's party that started the attack and the accused acted in private defence, it is the duty of the Court to acquit the accused (*Din Mohammad, J.*) DARI v. EMPEROR.
41 P L R 14.

—S. 99—Right of private defence—Resistance to

force if he is resisted the accused cannot rely upon S. 99, I. P. Code, for they have no right of private defence in such a case (*Pollock, J.*) EMPEROR v. KISANIAL
1939 N L J 397.

—S. 99—Scope—Arrest by police officer in good faith under colour of office—Use of force to rescue justified—Private defence—Right

... not an act ... are a police ... good faith ... legal, and ... force in ... order to rescue the arrested persons, as there is no right of private offence against such an act of a public servant, (*Lakshmana Rao, J.*) PUBLIC PROSE

PENAL CODE (1860), S. 100

v. AMIRTHAM SERVAL. 1939 M W N 1004 =
50 L.W. 763 = (1939) 2 M L J 776
—S 100—*Excess of right of private defence—*
—*Liability for*
In cases where the right of private defence is found

—S 100—*Right of private defence—Accused*

and did not receive any injury. The accused got hold of an axe and hit that person on the the axe as a result of which that person died. The accused had an advantage over the deceased both in respect of age and physique.

Held, that the accused had a right of private defence but he exceeded that right. (*Young, C J and Sale, J*)
KALA MOHAMMAD AKBAR *v.* EMPEROR

A.I.R. 1939 Lah 534

—S 100—*Right of private defence—Extent of.*

Merely to cause an injury sufficient in the ordinary course of nature to cause death necessarily is not itself

order to prevent the second blow falling upon him struck A with a dab on his head which stroke resulted in the death of A.

Held, that A's action in getting a second time had reasonably caused B to grievous hurt, if not death, would befall not strike A as he did and it could not that B had exceeded the right of private defence to him by law. (*Sharpe, J*)
NGA CH KING 183 I C 145 = 12 R R 45 = 40 Cr L J 725 =

PENAL CODE (1860), S. 124 A.

person or persons abetted, and to the offence or offences the commission of which is abetted. S. 117 deals with the former whatever be the nature of the offence abetted, whereas S. 115 deals with the latter without having regard to the person or persons abetted. S. 115 is not

of the offence specified in the section itself. There is no express provision in the Penal Code for the punishment

appropriate provision for such an offence. Although both sections be applicable, there cannot be separate sentences under the two sections for the same criminal act, and the conviction should properly be under that section which inflicts the higher punishment. If a per

J.) EMPEROR *v.* LAVJI MANDAN 41 Bom L R 980 =
A.I.R. 1939 Bom 452

17—Scope—If an "express provision"
—Abetment of murder by the public—
apted but hurt only caused—Offence—See
PENAL CODE, SS 115 AND 117 41 Bom L R 980

—Ss 120 A and 34—*Distinction between*

CODE, is the commission of a criminal act in

Where a trespasser resists the rightful owner or his | a pardon stands corroborated in material particulars. He

124-A—*Government established by law—*
of Ministers

council of Ministers of a province should not be
d as "Government established by law" within

PENAL CODE (1860), S. 121-A.

—S. 121 A—*Offence under—Article relating to condition of political prisoners in jail.*

The article for printing and publishing which the accused were convicted under S. 124 A related to the

Government denying the allegations.

Held, that the petitioners could not be convicted under S. 124 A. Even if the could be construed as calca towards the Government, in

A. L. N. 1000 C. 111

—S. 121 A, Expls 2 and 3—*Applicability*

Explanations 2 and 3 to S. 124 A have no applica tion whatever unless the criticisms are concerning the measures of Government or the administrative or other

vances and abuses, and to distinguish this from attempts, whether open or disguised, to make the people hate their rulers. To tell a crowd of labourers that those who are in are unjustly prevented from tellu and are punished for doing so, th the laws that are framed are partia the employers and detrimental to those of the labourers who are th-refore unable to get redress, that the Bar

PENAL CODE (1860), S. 148

in possession notwithstanding the delivery effected in his presence without putting forward a case of actual dispossession thereafter. To sustain a conviction of the accused on a charge under S. 147, I. P. Code, on the

Where it appears that the accused took up merely a passive attitude, during the whole course of an

—Ss 147, 148 and 149—*Seven named culprits alleged to have participated in riot—Three of them given benefit of doubt and acquitted—Liability of rest*

Before S. 149 can come into operation, there must be five or more culprits to constitute an unlawful assemblv. Where seven culprits are named and three of them are

view of the findings there are only four persons left and therefore neither S. 147 nor S. 148 nor S. 149 can be

tars obstructing flow—*Order under S. 144, Cr. P. Code, restraining lower owners from cutting—Recession on*

—S. 147—*Burden of proof—Charge of forcible*

water to go round, and a higher proprietor is obstructing a lower proprietor into his own loting or assault

be assumed that the accused obtained actual possession, and it must be presumed that they continued in possession as the rightful owners, because the presumption must always be in favour of the rightful owner. It is not open to the complainant to allege that he remained

force the harvest of one's own crop is an unlawful object. It is not a case of maintaining a particular right by force but of preventing the commission of an offence like theft or mischief which is threatened, it is not unlawful for a person to protect his own property from theft or mischief.

PENAL CODE (1860), S 149

(*Pandrang Row, J*) MOHIDEEN PICHAI ROWTHER
v EMPEROR. 1939 M.W.N. 879 = 50 L.W. 557

—S 149—Constructive liability—Intention, if material.

If an offence of murder is committed by a member of an unlawful assembly when that assembly is prosecuting its common object which is obviously unlawful, every member of that assembly is equally responsible under the terms of S 149, I.P. Code, for that offence. It is immaterial whether any member individually intended to commit that offence or not. Intention is dealt with in S 34, I.P. Code, and can be considered in those cases only which are governed by it (*Din Mohammad and Ram Lall, J.J.*) SOHNA v. EMPEROR

41 P.L.R. 802

—S 149—Liability under—Extent of

Once an assembly has become unlawful then all things done in the prosecution of the object of that assembly are chargeable member thereof. The liability of ever not only to the acts intended by all to those offences which were likely to achieving the common object. Where, therefore, the unlawful object was to cause grievous hurt with lethal weapons and death was the likely result of the beating they intended to administer, the causing of death in

41 P.L.R. 443 = 40 Cr.L.J. 712 =
A I R 1939 Lah. 245

—S 153-A—Offence under—Attack on capitalists.

"Capitalists" are not a definite and ascertainable class of His Majesty's subjects, and a speech which is an

of the word
o designate a
"His Majesty's
subjects" or to designate the shareholders of
a company, as distinct from the employees or
labourers of the company, and the latter, respectively,
as "classes of His Majesty's subjects" Therefore
even if a speech be regarded as being calculated
to create hatred or enmity against the Burma Oil
Company or the Indo Burma Petroleum Company or the
shareholders of these companies the making of the

PENAL CODE (1860), S 182

nating this false imputation even after knowing that the District Medical Officer had certified that the complainant was not a leper.

Held, that the facts alleged did not constitute an offence under S 171-G, I.P. Code, and did not therefore require the sanction of the Local Government. (*Lakshmana Rao, J.*) HAJEE MAHOMED KADIR SHERIFF v RAHIMATULLAH 1939 M.W.N. 610.

—S 181—Offence under—Claim for insurance money—False affidavit about age of insured person sworn before Honorary Magistrate

A person who swears a false affidavit before an Honorary Magistrate is liable to be punished under S 181.

—S 182—Applicability—False information given to police during investigation—Offence.

If a witness answers questions because he is compelled to answer by reason of the powers of the police, that in itself may well be sufficient to negative the guilty intent or knowledge necessary for a conviction under S 182. The information is then not so much given as taken. But it cannot be said that S 182 can never apply to false information given to the police during the course of an investigation (*Davis, J.C. and Lobo, J.*) JHAMATMAL ALUMAL v EMPEROR 184 I.C. 243 = 12 R.S. 100 = A I R 1939 Sind 274.

—Ss 182 and 211—Applicability—Information arrest of third person on murder in discharged—Offence

or the institution of proceedings as well as by way of complaint to Where a complaint is made and a Magistrate, the Magistrate's that of the police and the provisions of S 195 (1) (b), Cr. P. Code, cannot be evaded by placing an offence under S 195 (1) (a) Where upon the information given to the police by the accused a third person was arrested on a charge of murder and challaned to the Court of a Magistrate by whom he was subsequently discharged and it was the prosecution case that the accused was responsible for the proceedings instituted against the third person

Held, that the offence committed by the accused was one under S 211 and not under S 182 (*Davis, J.C. and Lobo, J.*) JHAMATMAL ALUMAL v EMPEROR. 184 I.C. 243 = 12 R.S. 100 = A I R 1939 Sind 274

terating charges

show cause why
challenges the
made before the
the Magistrate
ons of S. 203,
Cr. P. Code cannot
been
Hen

344 =
271.
against
ode—

PENAL CODE (1860), S. 186.

Where a natarai petition against the report of police has been actually dismissed by the Magistrate under S. 203, Cr. P. Code, the trial under A.I.R. 1933 Cal 257 (Henderson, J.J.)

I.L.R. (1939) 1 Cal 31
12 R.C. 32 (1)

—Ss 186 and 379—Applicant pointed by Court taking possession of third party—Third party retakes fully and obstructing receiver—Offence

S. 186, I. P. Code, contemplates a receiver who has been lawfully discharging his duty, but when there was no legal basis for the seizure, the section does not apply. Where a receiver has been appointed by Court taking possession of corn in possession of a third party who subsequently retakes possession of it peacefully and did not allow the receiver to make bad of the corn

Held, that the party could not be punished under S. 379 because the party only retakes possession peacefully of his own property and further as the receiver was not a receiver of stolen property.

v. EMPEROR.

184 I.C. 789 =
A.I.R. 1939 Sind 333

—S. 188—Order under S. 144, Cr. P. Code—Conviction for disobedience—Proof of knowledge of terms of order—Necessity for.

In order to sustain a conviction of a person under S. 188, I. P. Code for disobedience of an order passed under S. 144, Cr. P. Code, proof of his knowledge of the terms of the order is necessary (Henderson and Khundkar, J.J.) NIHARENDU DUTT v. EMPEROR

184 I.C. 856 = 43 C.W.N. 1061 =
A.I.R. 1939 Cal 703

—S. 191—Applicability—Witness believed by appellate Court though disbelieved by trial Court—Complaint of p.

It would be wrong to say whose evidence was believed it, had been believed by Row, J.)

184

—S. 191 and Oaths Act (1873), S. 14—Existence of witness—Presumption that it is made on affirmation—Applicability of Oaths Act, irrespective of the presumption—Offence under S. 191, I. P. Code committed.

The law requires a Magistrate to examine a witness on affirmation or oath and in every case there is a legal presumption that the proper procedure was followed. It may therefore be presumed that the statement of a witness is made on affirmation. Even otherwise, according to S. 14 of the Oaths Act, every witness is required to state the truth when giving evidence and as such when a witness makes a statement

PENAL CODE (1860), S. 224.

—S. 191—Scope—Conflicting statements in criminal trial—Charge and conviction on basis of—Sus-

pected under S. 191, Penal Code,

I.L.R. (1939) Kar 280 = 162 I.C. 914 =
12 R.S. 35 = 40 Cr. L.J. 707 = A.I.R. 1939 Sind 170.
—Ss 193 and 500—Applicability—False and defamatory statement in deposition of witness before Court—Offence. See CR. P. CODE, S. 195 (1) (d).

1939 M.W.N. 320.
—S. 211—Applicability—Information to police land as to state of mind of accused—Order of discharge. See PENAL CODE, I.R. 1939 Sind 274.

The elements of an offence under S. 211 are firstly that a false charge should be brought, secondly that the person bringing it should know that there was no just or lawful ground for such proceedings or charge and thirdly that it should be brought to cause injury to the persons against whom it was made. Therefore a mere

—S. 211—Ingredients of offence—What the prosecution has to establish

To sustain a prosecution and conviction under S. 211, I. P. Code, it is enough to show the mere absence of proof of the guilt of the person or persons said to have

an intention to cause injury to the person or persons charged. Suspicion has to be distinguished from evidence and the prosecution has to establish in a prosecution under S. 211 facts irreconcilable with the innocence of

—S. 224—'Charged'—Police officer laying his hands without any intimation as to the offence committed—Person arrested, if charged with an offence.

The mere fact that a police officer put his hand on

PENAL CODE (1860), S 225-B

EMPEROR 14 Luck 409=179 IC 498—
 11 E O 181=1939 O L E 52=40 Or L J 221=
 1939 O W N 63=1939 A W R (C C) 39=
 1939 A Cr C 23=1939 O A 148=
 AIR 1939 Oudh 81

PENAL CODE (1860), S 299

were only such as might possibly wound and in fact did so then there would be no offence under the section if the words used were bound to be regarded by any reasonable man as grossly offensive and provocative, and were maliciously intended to be regarded as such,

the absence of the seal makes the warrant void, and resistance to arrest in execution thereof is, therefore, no offence (*Mosely J*) THE KING v MAUNG PO SHEIN 1939 Rang L R 445=188 IC 791=

12 R R 116=40 Cr L J 845=
 AIR 1939 Rang 320

—S 266—Applicability—Offence under—Essentials of—Fraud—False measure—Meaning of—Intention—Bombay Weights and Measures Act—Offence under—If renders measure false

A measure can only be described a something other than what it purports to measure is smaller than the standard accused deliberately used this measure he cannot be held to have acted fraudulently within the meaning of S 266 I P Code The fact that an offence may have

A I R 1939 Rang 199
 —Ss 299 and 300—Cases under—Proper mode of approaching facts

The proper way to approach facts and apply law in cases where one man has by his act caused the death of another is to deal with the case in the four stages given below —

Stage 1 —It should first be established to the satisfaction of the Court that the accused person has done an act which has caused the death of another

considered whether the amounts to culpable homicide

Stage 3 —It is only after considering the two stages that S 300 comes into operation Therefore the next is whether the ingredients of

be considered on the facts of the case whether the culpable homicide is

ingredient of the offence under S 266 I P Code so as to sustain a conviction It is only when the seller purports to sell according to a certain standard and below that standard that he can be said to be guilty of fraud so as to render him liable to conviction under S 266 I P Code (*Broomfield, Ag C J and J*) EMPEROR v KANAVALAL

41 Bom L R 977=A I R 1939 Bom

—S 283—Applicability—Cart track in land of accused—Conviction for closing it—Sui

not murder, the only matter to be considered at the fourth stage is whether the accused has established (if he can) that the act of the accused is not murder

show insult for the sake of insulting and with an intention to commit culpable homicide has been committed (*Pandurang Row*,

PENAL CODE (1860), S. 300

between himself and the deceased deliberately went outside and fetched a joke pin and returning after more than 5 minutes had elapsed struck the deceased on the head with the pin with great force and the deceased died shortly afterwards.

Held that the accused must have known that his act was imminently dangerous that it must in all probability cause death or such bodily injury as was likely to cause death and since he had no reason to believe that such bodily injury he was guilty

J) NGA CHIT TIN v THE KING

183 I.C. 145 = 12 R.R.

—S. 300—*Offence of murder—Injury ordinarily sufficient to cause death—Sufficiency.*

An injury inflicted by the accused and sufficient in the ordinary course of nature to cause death is not by itself sufficient to support a conviction of murder unless the accused intended that injury should be sufficient in the ordinary course of nature to cause death. (Sharpe, J.)

NGA CHIT TIN v THE KING.

183 I.C. 145 = 12 R.R. 45 = 40 Cr.L.J. 725 =

—S. 300(3)—*Scope—If necessary.*

For cases that fall within § it is not necessary that the ledge of death, so long as sufficient to cause death clause when the degree of p great, and certainly so where death is the inevitable result of the intended injuries, whether the culprits

J) NGA CHIT TIN v THE KING

183 I.C. 145 = 12 R.R. 45 = 40 Cr.L.J. 725 =

A.I.R.

—S. 300, Excepts—*Proof of prosecution.*

The question as to whether the case of the exceptions of S. 300 does not arise, unless and until the prosecution case of murder. If the prosecution culpable homicide (under S. 299) has been proved and the accused has failed to prove that such culpable homicide amounted to murder (under S. 300), it is improper, and indeed useless, to consider whether any of the excluding factors are present. (Sharpe, J.)

NGA CHIT TIN v THE KING 183 I.C. 145 = 12 R.R. 45 = 40 Cr.L.J. 725 = A.I.R. 1939 Rang 225

—S. 300, Except 1—*Applicability—Causing death under superstitious belief.*

Under S. 300, Except 1, I.P. Code, provocation must be such as will upset, not merely a hot tempered or hyper-sensitive person but one of ordinary sense and calm

PENAL CODE (1860), S. 300.

murder if there is no proof that he is labouring under any hallucination or is mentally deficient. (Teh Chand, A.C.J. and Abdul Rashid, J.) DES RAJ v. EMPEROR.

I.L.R. (1939) Lah. 345 = 41 P.L.R. 758.
—S. 300, Except 1—*Applicability—Grave and sudden provocation—Test of—Showing a "booja" to Baluchi—If justifies killing.*

In determining whether the provocation relied on for

which the offender belonged, of the power of self control. It was not intended that the law should take into account the peculiar idiosyncracies of the particular offending individual but it was intended that the Court should take into account the habits, manners and feelings of the class or community to which the accused belonged. The mere fact, that when the Baluchis are shown a "booja" (a gesture of contempt) they get excited, is not in itself sufficient to give them the benefit of the first exception

—S. 300, Except 1—*"Grave and sudden provocation"—Meaning—Accused carrying on intrigue*

husband discovers his wife in the act of adultery and thereupon kills her, he is guilty only of manslaughter

—S. 300, Except. 1—*Slaps on back—If grave provocation.*

Merely because a person is slapped two or three times on the back does not amount to grave provocation though it may be sudden, and it is not sufficient to deprive the person of his power of self control especially when the person slapping has no weapon in his hand at the time of slapping. (Sharpe, J.)

NGA CHIT TIN v THE KING 183 I.C. 145 = 12 R.R. 45 = 40 Cr.L.J. 725 = A.I.R. 1939 Rang 225.

—S. 300, Except 4 to S. 300, *inter alia* that the act was
Where therefore there

PENAL CODE (1860), S 300

no quarrel either sudden or otherwise it is unnecessary to look further and inquire whether there have been established any of the other facts which are essential for the purpose of bringing the case within Excep 4 (*Sharpe, J*) NGA CHIT TIN v THE KING

183 IC 145=12 RR 45-40 Or LJ 725=
AIR 1939 Rang 225

—S 302, Excep 4—Applicability—Test

If one of the two accused persons brings himself in with in the 4th exception to S 300 I P Code there is no room for the application of S 34 against his co-accused at all (*Bartley and Henderson, JJ*) ASMAT SHEKH v EMPEROR

70 CLJ 299

—S 300 Excep 4—Applicability—Test

Whether or not the killing was premeditated is not the first test to be applied when considering whether the exception of "a sudden fight in the heat of passion" is applicable to any given set of facts. The first test is whether the act of the accused which caused the deceased's death was done without premeditation. The distinction is not to be ignored (*Sharpe, J*) NGA CHIT TIN v THE KING

183 IC 145=12 RR 45-40 Cr LJ 725=AIR 1939 Rang 225

—S 300 Excep 5—Killing concubine at her request and with her consent—Offence—See CR P CODE S 164

1939 MWN 1132
—S 302—Applicability—Assault with lathi on head and neck—Intention to cause death—Body of victim placed on railway line and run over and decapitated—Death caused by decapitation—Offence—Penal Code S 33

Acts closely following upon and intimately connected with each other cannot be separated and assigned one to one intention and another to a separate intention under S 33, I P Code both must be ascribed to the intention which prompted the commission of them and without which neither would have been done. An incident brought about by the accused with a view of causing death is composed of two acts committed by the accused which together cause death it must be ascribed to the original intention of causing death and the offence is one of murder. The accused whose intention from the outset was to cause death to his victim, a woman in pursuance of a pre-conceived plan attacked her from behind with a lathi on the neck and head, rendered her unconscious and then took the body and placed it on a railway line where the same was run over and decapitated. There was no evidence whatever that the accused when he carried the deceased to the railway line was under the belief that she was dead or that he was handling a dead body. Medical evidence however favoured the view that the actual cause of death was decapitation.

Held that the accused was guilty of murder and liable to conviction under S 302 I P Code (*Varma and Rowant, JJ*) EMPEROR v NPHAL MAHTO

18 Pat 485=1933 PWN 630=
AIR 1939 Pat 62

—S 302—Applicability—Charge of murder new born infant—Even idle to be proved—Proof birth of child alive—Necessity

—S 302—Applicability—Charge of murder

—S 302—Applicability—Charge of murder

—S 302—Applicability—Charge of murder

—S 302—Applicability—Charge of murder

—S 302—Applicability—Charge of murder

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—S 302—Applicability—Charge of murder

—S 302—Applicability—Charge of murder

—S 302—Applicability—Charge of murder

PENAL CODE (1860), S 302

Death—Accused if only guilty under Ss 325 and 34

Where a number of persons take part in an attack against the deceased but only the accused were actually concerned in the beating of the deceased they can only be convicted with the assistance of S 34 I P Code, and where the intention of the accused was merely to give the deceased a good beating and the injuries were trivial excepting for two, it must be held that the offence committed falls under S 325 read with S 34 rather than under S 302 read with S 149 (*Zia ul Hasan, CJ and Bennett, J*) BHAGWATI v EMPEROR

183 IC 265=12 RO 20=1939 OWN 662=

1939 AWR (CC) 96=1939 O A 574=

1939 A Cr C 123=1939 O L E 486=

40 Cr LJ 754=AIR 1939 Oudh 251

—Ss 302 and 328—Act to the death—Offence committed

Where the common intention of the two accused was to effect an attack on some one with a knowledge that the probable result of that attack at least would be to cause grievous hurt with a deadly weapon but there is no sufficient proof to show that there was a common intention of the two accused to cause death or injury sufficient in the ordinary course of nature to cause death, they can be convicted under S 326 and not under S 302 (*Mya Bi and Mulye, JJ*) NGA THAN v THE KING

181 IC 78=12 RR 123=

40 Cr LJ 871=AIR 1939 Rang 263

—S 302—Evidence—Evidence of blood stained

nails—Value of

The evidence of blood stained nails is not only of no

medico legal value but may be extremely dangerous to

innocent persons. Using such evidence as evidence

corroborating an approver or as circumstantial evidence

is not allowed. *Blacker,*

1851=

576=

AIR 1939 Lah 149

—S 302—Evidence—Recovery of blood stained

shirt and suit

Where the only evidence against the accused is the

evidence of the recovery of the blood stained shirt and

the blood stained suit and the fact that he concealed

himself in the reeds his conviction for murder cannot

be upheld (*Young, CJ and Blacker, J*) BUTA

SINGH v EMPEROR

182 IC 691=12 RL 65=

40 Cr LJ 697=41 P L R 16(2)=

AIR 1939 Lah 194

—Ss 302 and 120 B—Evidence—disclosing murder

Charge of conspiracy—Propriety

Where the evidence of an approver upon which a case

is founded discloses an offence of murder, pure and

simple the substitution in the Sessions Court of a

charge of conspiracy after the withdrawal of the major

charge is misconceived and the practical effect of this

is deprived

Hender-

v *EM*

180 481=

Cal 857

—Ss 302 and 304—Offence under—Death caused

by plunging knife with left hand in temple of deceased

Where the accused whose right hand was crippled,

deformed and weak, caused the death of an old woman

believing her to be a witch by knocking her down and

plunging a knife in her temple with his left hand which

was normal

Held that the intention of the accused was none

other than to cause death and he was, therefore, guilty of

—Ss 302 325 and 31—Attack by several and beating only by few—Intention only to give beating—

PENAL CODE (1860), S. 302.

murder, (*Tek Chand. A.C.J. and Abdul Rashid, J.*)
DES RAJ v. EMPEROR. 1 L.R. (1939) Lah 345=
41 P.L.R. 758.

—Ss. 302 and 109—Sentence—Accused procuring

relevant to say, for not imposing the full penalty under S. 302, I.P. Code, that the primary object of the doctory was to obtain loot and that they only intended to commit murder if this was found to be desirable in their own interests. (*Sidma and Robert JJ.*)
ISHAR SINGH v. EMPEROR

—S 302—Sentence—

evidence.
There can be only two positions. The Judge is either satisfied that the accused is guilty or he is not. If he is satisfied, the accused must get the normal punishment. If he is not, the accused must be acquitted. There is no middle course at all in judging the guilt of the accused.

PEROR. A.I.R. 1939 Pesh

—Ss 302 and 149—Sentence—*for murder.*

Where accused persons are sadd with liability for murder under S 149, I.P. Code, in addition intention to cause the act cannot be clearly established, they should be given the benefit of the lower penalty under S 302.

(*Blaker and Ram Lal, JJ.*) RAHMAM
I.L.R. (1939) Lah 77=182 I.C. 900=
41 P.L.R. 443=40 C

A.I.R. 1939 Lah 245

result of that injury, the offence is murder, and the fact that the injured person might have been saved if expert medical evidence had been afforded at once makes no difference as to the nature of the crime (*Burn and Stodart, JJ.*) SREERAMULU v. EMPEROR

1939 M.W.N. 1129=50 L.W. 787
—S 303—Sentence of transportation for life remitted conditionally—After release accused breaking conditions and committing offence of murder—If should be sentenced to death.

A sentence of transportation for life means a sentence of transportation for the whole of the remaining period

and the person is released, such person must still be deemed to be under sentence of transportation for life in spite of the fact that he is not actually under sentence or

PENAL CODE (1860), S. 304.

in a penal settlement. Where therefore such a person, after his release on remission, breaks the conditions on which remission was granted and commits an offence of murder, his case falls under S 303 and such person (*Mya Buand Sharpe, J.J.*)

1939 Rang L.R. 44=
R.R. 451=40 Cr.L.J. 490=
A.I.R. 1939 Rang. 124
homicide not amounting to

A.I.R. 1939 Rang 225.
—S. 304-A—Applicability—Motor car—Blowing of horn and overtaking another car going ahead—Accident—Charge under S 304 A, read with S 114—

his motor car
vertake another
nt occurred and
the petitioner was charged under S 304-A read with S 114, I.P. Code
Held, that the charge was not warranted and must be quashed (*Lakshmana Rao, J.*) SEETHARAMA CHETTIAR, In re 183 I.C. 740 (1)=12 R.M. 411=
1939 M.W.N. 416=49 L.W. 654=
40 Cr.L.J. 850=A.I.R. 1939 Mad. 671.

y, was caught
r was able to
The boy was

lorry striking
of the boy striking
therefore not guilty
(*J.*) SEVA SINGH v.
17=12 R. Pesh 25=
A.I.R. 1939 Pesh 33.

—Ss 304, Part I and 300, Excep 1—Causing under grave and sudden provocation—Sentence—Many injuries on deceased.

a Sessions Judge in convicting the accused under S. 304, Part I, I.P. Code for causing the death of a person under grave and sudden provocation entitling him to the benefit of Excep 1 to S 300, I.P. Code, imposed a sentence of three years rigorous imprisonment taking into consideration that there were many injuries on the deceased.

Held, that even assuming that the accused caused all the injuries, the sentence was too severe. If a person was deprived of the power of self-control, the mere amount of beating which he gave to the person who deprived him of that control was not a proper criterion to take into account in awarding a sentence. The more self control was lost and therefore the more Excep 1 to S 300, I.P. Code, the more (*Young, J.*)

I.L.R. (1939) Lah. 278=184 L.C. 432=12 R.L. 223=
41 P.L.R. 761=A.I.R. 1939 Lah. 471.

—S 304, Part I—Sentence—Considerations.

PENAL CODE (1860) S 304

If the accused had considerable provocation and had no real premeditated intention to attack and the act of the deceased though justified by the right of private defence, had been the start of the fight, a very severe sentence is not called for (*Dalip Singh and Blacker, JJ*) *BAKASHA v EMPEROR* 184 IC 325= 12 R L 209=40 Cr L J 928=41 P L R 315= AIR 1939 Lah 426

—S 304 (1)—Offence under—Evidence

to the question, abused him, whereupon he picked up the chhura which was lying close by, and killed her

Held, that in killing the wife, the accused acted under grave and sudden provocation and his offence therefore fell under S 304, Part I (*Tek Chand and Dalip Singh, JJ*) *ABDUL KHANAN v EMPEROR* 184 IC 186=12 R L 177 40 Cr L J 868= AIR 1939 Lah 456

—Ss 307 and 326—Applicability—*Sn* causing injury not likely to cause death in *nary* course of nature—Offence

Where only one stab is given by the acc there is nothing to show that the injury inflicted to cause death in the ordinary course of nat.

—S 323—Fight in connection with possession dispute—Enquiry as to possession—Necessity

Where the possession of a field is in dispute and the alleged beating forming the subject matter of an offence under S 323 I P Code is said to have taken place during an attempt by one of the parties to sion of the field, there can be no conviction accused under S 323 I P Code without and decision as to who was in possession of the time of the occurrence (*Kadhakrishna J*) *HULASI v CHHOTY LAL* 1939 O W N 319

1939 O A 820=1939 A W R (O C) 319

It cannot be the weapon used or known to be likely to be caused is grievous Where the stick used is not before the Court and there is no evidence as to its size or nature and the injury caused is a simple fracture of the radius it cannot be said that grievous hurt is intended or known to be likely to be caused In

—Ss 332 and 353—Process server about to arrest person under warrant—Beating of and causing injury—Offence

Where a process server who is about to arrest a person in pursuance of a warrant is beaten and receives injuries

PENAL CODE (1860), S 351

—S 334—Grave and sudden provocation—Crying of counter slogans in praise of one's own leader

The crying of a counter slogan in praise of the leader of one's own party and not in disparage of the leader of the other party is likely to cause provocation to its members but it does not normally amount to grave and sudden provocation (*Mir Ahmad, J*) *ASHRAF IS RARUDDIN v EMPEROR* 182 IC 643= 12 R Pesh 8=40 Cr L J 831= AIR 1939 Pesh 20

—S 338—Motor accident—Negligence—Test

Failure by a person, driving a motor vehicle, to sound the horn is not necessarily negligence, and to sound a horn does not necessarily negative rashness or negligence in driving Each case must be decided on its own facts The mere fact that a motorist strikes a pedestrian walking on the road does not give rise to a presumption that the accident was caused by his carelessness Such a presumption is ill founded as a great many such occurrences are due to accidents If the car was being driven at an excessive speed that in itself would be evidence to

—S 341—Assault—Intention to do harm—Persons assisting

A girl who is alleged to have been kidnapped, persons assisting the police must be careful not to interfere with the rights of other people But where such persons coming across a covered cart stop on a bona fide belief that the girl is in it and so accuse the owner of the cart and insist upon calling for the police, but upon search the girl is not found in the cart such persons are not guilty of wrong

—S 349—Force—Causing change in the position of human beings—If amounts to force *See* PENAL CODE SS 351, 353 AND 349 1939 O W N 63

—Ss 349 and 350—Force to a thing—If contemplated

Ss 349 and 350 I P Code contemplate the use of force to a person and not to a thing (*Din Mahomed, J*) *RAM CHAND v EMPEROR* 183 IC 340= 12 R L 111=40 Cr L J 781=41 P L R 63= AIR 1939 Lah 184

—Ss 351 353 and 349—Apprehension from some one not the accused—If an assault—Causing change in the position of human being—If force used—Accused's men moving near complainant at a gesture from accused—Accused if guilty under S 353

According to the definition in S 351, Penal Code, apprehension of the use of criminal force must be from the person making the gesture or preparation and if it arises from somebody else, it is not an assault on the part of the person making the gesture As according to S 349 force cannot be said to be used by one person to another by causing change in the position of another person where the accused's men moved near at a gesture from the accused, but the accused is guilty of an (*Zia-ul-Haque, J*) *MUNESH*

PENAL CODE (1860), S. 353

WAR BUX SINGH v. EMPEROR 1939 O.W.N. 63 =
 14 Luck. 409 = 179 I.C. 498 = 11 R.O. 181 =
 1939 O.L.R. 52 = 40 Cr.L.J. 221 =
 1939 A.W.R. (C.C.) 39 = 1939 A.C.R. 23 =
 1939 O.A. 148 = A.I.R. 1939 Ondh. 81.

—S. 353—Applicability—Sanitary Panchayat Board—Obstruction to—Offence CODE, SS. 21 AND 353.

—Ss. 353 and 225—Female reeve arrested under a warrant for offences under 426—Conviction under Ss. 353 and 225 Cr. P. Code, Ss. 76 and 90

custody was illegal as they were arrested on a non validable warrant. Though ordinarily a summons should issue to such accused, yet under S. 90 of the Cr. P. Code, a warrant may be issued in any case if the magistrate thinks necessary under the circumstances and it need not contain any endorsement under S. 76, Cr. P. Code. (Allison, J.) EMPEROR v. LACHHMI NARAIN I.L.R. (1939) A. 272 = 179 I.C. 899 = 11 E.A. 398 = 40 Cr.L.J. 283 = 1938 A.L.J. 1229 = 1939 A.C.R. 22 = 1939 A.W.R. (H.C.) 63 = A.I.R. 1939 All. 156.

—S. 353—Offence under—Uttering of threats.

A person who merely utters certain threats is not guilty of an offence under S. 353, I.P. Code, when he does not make any gesture or preparation so as to cause any person present to apprehend that he is about to use criminal force to that person (Edgley, J.) KAILASH CHANDRA SEAL v. EMPEROR, 43 C.W.N. 756

PENAL CODE (1860), S. 368,

—S. 364—Conviction under—Legal evidence—Necessity for.

A conviction under S. 364, I. P. Code, cannot be supported when there is no legal evidence. Where the sole evidence is that of the mother of the kidnapped

—Ss. 366 and 376—Charge under—Absence of

prove the age to sustain a conviction under those sections. (Ismail and Mulla, JJ) EMPEROR v. QUDRAT 1939 A.W.R. (H.C.) 693 = 1939 A.C.R. 161 = 1939 A.L.J. 980 = A.I.R. 1939 A. 708

—S. 366-A—Intention of accused—Proof—Handi-ness of girl—Relevancy

In a trial for an offence under S. 366-A the fact that the girl is handsome is no evidence to show that the persons with whom she goes away had any intention that she should become an inmate of a brothel. Where the judge while dealing with the question of intention with regard to the offence under S. 366 A asks the jury to look at the surrounding circumstances and points out that the girl was handsome, it amounts to a serious misdirection. (Bartley and Henderson, JJ.) EKKARI DAS v. EMPEROR, 182 I.C. 447 = 12 E.C. 65 = 43 C.W.N. 668 = 40 Cr.L.J. 660 = 14 I.R. 1000 Cal. 290.

of girl
—Duty

before
a strict
age of
her this

under S. 366 for having kidnapped a girl who twenty years of age, while she was unconscious

—S. 368—Concealment—Meaning of

Concealment means a withdrawal from the actual

—S. 363—Applicability—Girl going to institution with mother's consent—Mother afterwards changing mind—D.

Where consent of mother to the girl's kidnapping was given, EMPEROR

only be

PENAL CODE (1860), S 368

P Code, had been committed in respect of the girl abducted (*Ram Lal, J*) SOHAN SINGH v EMPEROR 182 IC 520=12 RL 53=1939 A Cr C 143=40 Cr L J 684=41 PLR 45=

AIR 1939 Lah 180

—S 368—Offence under—Proof required

Before a conviction under S 368 I P Code, can be

lawful guardian by her lover It is not enough to show that the accused might have suspected or reason to believe that the person in the was kidnapped (*Bartley and Hen*)

DURGANONI DASSI v EMPEROR 43

—S 376—Charge for rape—Denial and plea of consent—If open

Where an accused is charged with rape he is entitled without prejudice to his denial of the incident to set up a plea of consent (*Davis J*) PABUDAN SINGH v EMPEROR 1938 A MLJ 135

—S 376—Offence under—Necessity for corroboration—Nature of corroboration required

Corroboration is not essential even in a case of an offence of rape The Court is entitled to accept the uncorroborated evidence of a girl but it should be slow in its acceptance of it It must scrutinize her evidence very carefully and unless her story convinces the Court so much that it does not possibly stand in need of any corroborative evidence it should not accept her uncorroborated evidence The evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime In other words it must be evidence which implicates him that

(J) U OF SEIN v THE KING

180 IC 936=11 RR

—S 376—Testimony of identification of accused by her—If corroborative evidence

In a rape case the fact that the prosecutrix subsequently identified the accused is not corroboration of her testimony (*Henderson and Khundir JJ*) BHOLA NATH v EMPEROR 43 CWN 1180

—S 379—Applicability—Person wrongfully deprived of possession of own property by receiver of Court—Retaking of possession peacefully—Offence See PENAL CODE SS 186 AND 379

AIR 1939 Sind 535

—S 379—Conviction under—Removal of timber seized under S 52 Forest Act—Finding as to ownership—Need for See FOREST ACT S 52

41 PLR 423

—S 379—Offence—Ingredients—Owner of cattle rescuing same from cattle pound—Cattle taken to pound to perio is having no connection with land or crops alleged to be damaged—Conviction of owner—Sustainability

There can be no theft by an owner of goods belonging to him from his own possession Where certain cattle are taken to the cattle pound not by the persons whose crops or land are said to have been damaged but by persons who have no connection with the crops or the land, the seizure is not legal and it confers no right of possession on the persons taking them to the pound If the

PENAL CODE (1860), S 405

owners of the cattle rescue them from the pound and drive them away, they are guilty of no offence and cannot be convicted under S 379 I P Code (*Pandurang Row, J*) CHITTIBOYINA v DANDUBOYINA NARAPPA, 184 IC 280=12 RM 430=

40 Cr.L.J 908=1939 M W N 470=

AIR 1939 Mad 775

S 379 Sent ...
nean and
so much
no other
in many
other cases prompts a thief to steal and it must be made

grower mortgaging crop to commission agent to secure to latter sale of crop and his commission—Sale by grower to another agent in breach of contract—Offence

A commission agent advanced a sum to a grower of potatoes upon the mortgage of his crop The mortgage was not security for repayment of money advanced but to secure to the commission agent the sale of crop and his commission The grower in breach of this agreement sent the potatoes for sale to another agent,

Held that the grower could not be said to have committed criminal misappropriation, criminal breach of trust or cheating (*Davis J*) TARUMAL v ISMAIL HAJI 179 IC 841=11 RS 154=

40 Cr.L.J 278=AIR 1939 Sind 48

—Ss 403 and 420—Partners—Liability to be convicted of criminal breach of trust in respect of partnership property—Test to decide

A partner can be convicted of a criminal breach of trust if he is shown to have been acting as a partner may and

complainant and the accused is a dispute between the partners, and the allegations of criminal offences under Ss 403 and 420 are made in the complaint, merely for the purpose of squeezing money out of the accused the dispute being merely one of civil nature the complaint is liable to be dismissed (*Davis, J*) MAHOMED JAMADAR v GHULAM RASOOL 179 IC 687=11 RS. 147=40 Cr L J 216=

AIR 1939 Sind 21

—S 405—'Entrusted'—Meaning of

The word entrusted in S 405, I P Code, is not a legal term which has a definite precise meaning attached to it It is an ordinary word a word in common use Every payment of money by one person to another does not amount to entrustment unless there are circumstances attending it from which one can gather that it was an entrustment and not a mere payment The mere payment by a debtor to a creditor or to a creditor's agent is not entrustment (*Pandurang Row, J*) EMPEROR v KRISHNAN 1939 M W N 1213

—S 405—Entrustment—Meaning of—Trust receipt—Buyer committing default in performance of terms—Offence

Trust receipts can be looked at in two ways Either they are documents constituting a declaration of trust whereby the buyer constitutes himself trustee for the seller when the property must have passed for a person

PENAL CODE (1860) S. 409

conclusion (*Din Mahomed J*) SHAM LAL v CHA
MAN LAL 184 I C 358=12 R L 212=

40 Cr L J 942=41 P L R 37=

A I R 1939 Lah. 406

—S 409—Offence under—Lambardar failing to
remit to Government collected land revenue

If a lambardar fails to remit to the Government
Treasury the money collected by him from the land-
owners on account of land revenue and ut lves it for his
own purposes he commits an offence under S 409 I P
Code. The status of a lambardar is not analogous to
that of a lessee. He acts as an agent of Government
and on receipt of the money a legal duty is cast on him
to deposit it in the Government Treasury. There being
an implied contract that the money will be so paid by
his omission to do so the lambardar not only violates
that contract but also the directions of law prescribing
the mode in which the trust is to be discharged. 38
Cr L J 530 Diss from (*Skemp and Ram Lal JJ*)
EMPEROR v SULTAN MAHMUD

I L R 1939 Lah. 119=184 I C 318=

12 R L 203=40 Cr L J 910=41 P L R 432=

A I R 1939 Lah. 340

—S 411—Applicability—Accused found both
before and after theft with person convicted for receiving
stolen property—Liability to conviction

The fact that a person was found with another who
is convicted of an offence under S 411 I P Code, both
before and after the theft does not warrant the conviction
of the former under S 411 (*Lakshmana Rao J*)
DORASWAMI NAIDU v EMPEROR

184 I C 609 (1) 1939 M W N 739 (1)=

A I R 1939 Mad 765

—S 411—Pledgee of stolen property—Li-
conviction—Wrongful gain—Dishonesty

A person with whom stolen properties are
cannot be convicted under S 411 I P Code
can be no dishonesty unless the transaction
(*Lakshmana Rao J*) RANGAYYA v EMPEROR

183 I C 603=12 R M 331 (2)=

40 Cr L J 828=1939 M W N 413=

A I R 1939 Mad 582

—Ss 415, 420 and 120 B—Applicability—
Tea Licensing Committee—Le-
endorsements on export quo-
showing credit in favour of t-
none—Offence—Export quota
of title

fact he had not the necessary quot-
signed the transfer quota certificates
ed certain entries in the ledger. The second appellant
was thus enabled to transfer a very large amount of
export quota rights in excess of the quota to the credit
of his estate and make a wrongful gain of a considerable
amount of money. It was not shown or suggested that
the account was overdrawn by any arrangement with
the Tea Licensing Committee. It was clear that the
quota transfer certificates were obtained by cheating.

were documents of title and the appellants were there

PENAL CODE (1860), S. 424

fore guilty under Ss 415 and 120 B or Ss 420 and 120 B
of the Penal Code (*Lakshmana Rao J*) DHASS v
EMPEROR 1939 M W N 1125

—S 417—Applicability—Potato grower—Mortgage
of crop to commission agent—Sale to another in breach
of—Offence See PENAL CODE Ss 403 406 and 417
A I R 1939 Sind 48

—Ss 420 and 477—Debtor inducing creditor to
produce baki for settling account and tearing it away—
Offence committed

Where the allegations made in a complaint were that
the accused owed the complainant certain amount of
money that on a false representation being made to the
complainant that the accused wanted to settle their
account the complainant was induced to produce his baki
and that when the baki was opened for the inspection of
the account the accused tore away that part of the page
of the baki which bore their thumb impressions and
decamped.

Held that the facts constituted an offence under S 477
and not under S 420 I P Code (*Din Mahomed,
J*) RAM PARSHAD v DHANNA 41 P L R 198=

A I R 1939 Lah. 513

—S 420—Financial snow ball scheme—Promoters
—If guilty of cheating

Where the prospectus issued by a company put for-
ward a financial snow ball scheme under which the dues
of the earlier subscribers as well as the expenses and
profits of the promoters of the company had to be paid
out of the contributions of the subscribers who came in
later.

Held that although the scheme could not go on in
definitely its success being dependant on the continuous

contribute money to the scheme (*Henderson and
Khandkar JJ*) HARI DAS BARAT v EMPEROR

I L R (1939) 2 Cal 81

—S 420—Offence under—Issue of prospectus p t-
table

scheme which was absurd and unworkable and on a

and Henderson
PEROR 181 I

—S 424—Construction—Open seizure in exercise
of a right—Section if applies

The removal mentioned in S 424 I P Code is
evident *generis* with the concealment which precedes it.
S 424 is designed to meet a special class of cases and
of a property by a

A I R 1933 A 110

PENAL CODE (1860), S. 425.

—S 425—*Offence—Essentials—Absence of mens rea—Liability to conviction.*

Mens rea is one of the essential ingredients of an offence under S 425, I. P. Code, and if the accused has not the intention to cause wrongful loss or

40 Cr.L.J. 656=A.I.R. 1939 Mad. 400=
(1939) 1 M.L.J. 321.

—S 430—*Applicability—Prevention of opening of channel—Offence*

—S 430—*Applicability—Putting up dam across water-supply channel and depriving complainant of water-supply for agricultural purposes—Offence*

Deprivation of water by putting up a bund across a supply channel constitutes an offence of mischief under S. 430, I. P. Code. It is no part of the definition of the offence of mischief by causing a diminution of water supply for agricultural purposes that the act of the accused should be an act of wanton waste. Where of the accused in throwing a bund across a channel completely destroys the channel from the

1939 M.W.N. 121=49 L.W. 298=

A.I.R. 1939 Mad. 794=(1939) 1 M.L.J. 445

—S 441—*Criminal trespass—What constitutes*

It is difficult to decide whether the trespasser is really acting *bona fide*. It is not enough that he should have some colourable title. If a person thinks that he has a better title to a property than the person in possession of it, he must get possession by legal process. If he takes possession by force with the object of forcing the possessor to go to law then he is guilty of trespass. (*Norman, I C S*) MAN MA PRASAD 1939 A

—S 447—*Bona fide claim of right—Entry continuing in possession after formal delivery to another—Intention to intimidate*

Where once formal possession has been delivered to another, if a person continues in possession and forcibly cultivates the land it will be held that the person gets himself restored to possession. The primary object is to intimidate the supposed right of possession and not to intimidate the possessor. S. 447, I. P. Code is quite legal (*York, J.*) BANU GOPAL v. EMPEROR. 14 Luck 360=179 IC 269=11 RO 156=40 Cr.L.J. 183=

1939 A.W.R. (C.C.) 11=1938 O.W.N. 1861=1939 O.L.R. 19=1939 A.C.R. 14=1939 O.A. 103=

A.I.R. 1939 Oudh 45

—S 447—*Offence under—Absence of necessary intention—Circumstances*

Where according to the complainant himself it is alleged that when the *Zilladar* of the circle objected to the accused cultivating the land, the latter said that he

PENAL CODE (1860), S. 467.

would settle the matter with the estate and would pay whatever rent the estate would demand, it is clear that the intention of the accused could not be said to be to intimidate, insult or annoy the proprietor, and as such his cultivation of the land cannot be said to amount to criminal trespass. (*Zia-ul-Haram, J.*) BHARAT SINGH v. RAZA ALI 1939 O.W.N. 224=

1939 A.C.R. 34=1939 A.W.R. (C.C.) 58=1939 O.A. 304.

—*Resistance subsequent to unlawful possession in respect of—Legality.*

Where there is unlawful entry, the offence of criminal trespass is complete. The offence is a continuing one only when a lawful entry is followed by unlawful continuance. Hence where persons already in un-

—*theft—Absence of evidence of precaution to conceal presence—Offence.*

Where in a trial on a charge under S 457, I. P. Code, the accused admits to have entered the house of the complainant at night with intent to commit theft, but there is no evidence of any precautions taken by the

—*Entry into house at night without theft—Absence of evidence of presence—Liability to conviction.* See PENAL CODE, S. 451

1939 P.W.N. 627.

—S. 457—*Offence—Intention—Presumption—Burden of proof—Duty of prosecution*

In a trial on a charge under S 457 I. P. Code, the prosecution has to prove that the accused entered the house of the complainant in the night and that his intention in doing so was criminal. The criminal intention being an ingredient of the offence, the prosecution must

—S 463—*Absence of forged document—Effect on*

proceed in the absence of a forged document (*Dar, J.*) 1938 A.M.L.J. 123

—S 467—*Scope—Document held to be forged—Attorney—Liability of—Plea of absence of criminal intent—If open*

There is nothing to prevent an attorney to a document which is adjudged a forgery from pleading that he was only foolish and not criminal in what he did, and that he was prevailed upon to sign by others, and that he believed the document to be a genuine one. There is no estoppel which bars an accused person in any case from pleading that he had no dishonest or criminal intention. (*Pandurang Row, J.*) VIRA REDDY

PENAL CODE (1860), S 467

EMPEROR 184 I C 460=12 R M 453=
1939 M W N 514=A I R 1939 Mad 730
—S 467—Sentence—Sentence of fine only—
Legality

S 467, I P Code requires that some should be awarded to a person convicted section A sentence of fine alone is not in law (*Pandrang Row J*) VIR

EMPEROR 184 I C 460=11 ..
1939 M W N 514=A I R 19

—Ss 477 and 420—Debtor inducing creditor to produce bali for settling account and tearing it away—
Offence committed See PENAL CODE, SS 420 AND 477 41 P L R 198

—S 477—Offence under—Genuineness of document—
If material

In deciding whether the destruction by the accused who is charged under S is either fraudulent or dishonest the document was a genuine document or a forged one is material. If it was a forgery no wrongful loss would be caused and no fraud could be committed upon any body by its destruction (*Bartley and Henderson JJ*)
AKBAR HOSSAIN v EMPEROR 43 C W N 222

—Ss 477 A and 465—Offence under—Accused making false entries

The meaning of the not restricted to cases deceived. The term deceive and by means of the deceit to obtain an advantage or an intention that injury should befall some other person or persons. The advantage which is intended must relate to some future occurrence or in other

embezzlement there is no material advantage of a prospective nature which he can be held to have intended to gain by the deception and hence he cannot be convicted either of the offence under S 477 A or under S 465 (*Mya Bu J*) MAUNG TINT v KING

181 I C 439=11 R R 464=40 C R L J 552=
A I R 1939 Rang 156

—S 482—Genuine dispute between parties—Pro per forum.

PENAL CODE (1860), S 499

The wording of S 489 D is very wide and would clearly cover a case where a person is found in possession of machinery, instruments or materials for the

—S 498—Detains—Meaning of

The word detains in S 498 I P Code, clearly implies some act on the part of the accused by which the woman's movements are restrained and this again implies unwillingness on her part. Detention cannot include persuasion by means of blandishment or similar

EMPEROR I L R 1939 Lah 148=

183 I C 318=12 R L 107=41 P L R 487=

40 C R L J 760=A I R 1939 Lah 295

—S 498—Detention—Meaning of

There could be no detention within the meaning of S 498 I P Code if the woman was not at all left

—S 132

The Penal Code contains no exception in favour of statements made by witnesses when giving evidence in Court to give them absolute privilege but S 132 of

Communication by to members of community stating that complainant has been ex communicated for refusal to give up property in favour of caste—Offence

A communication informing people even of one's own community that a certain person has been ex communicated from his caste certainly harms that person's reputation in the eyes of his fellows. Exception nine to S 499 I P Code does not justify the making of a defamatory allegation in order to bring pressure upon a

—S 489 D—Scope—Possession of instruments or materials for purpose of being used for counterfeiting—
Instruments found not all the articles required for counterfeiting—Offence

—S 489 D—Scope—Possession of instruments or materials for purpose of being used for counterfeiting—
Instruments found not all the articles required for counterfeiting—Offence

PENAL CODE (1860), S. 511.

with a view to leading him up to the defamatory statement which he wished to make. In the former case, there is an initial presumption that what the witness said was said *bona fide* in the protection of his own

—S. 511—"Attempt"—

—*Preparation and attempt to cheat—Intended victims not approached at all*
—*Conviction—Sustainability*

To attempt an offence is to make some effort to commit it, and not merely to harbour the intention of committing it. In order that an attempt may be punishable under S. 511, I. P. Code, it is essential that the person charged with the offence should have done some act towards the commission of the offence and in the attempt to commit it. A person cannot be convicted of an attempt to cheat, when the intended victim has not been approached at all, anything done before that stage can only amount to preparation and not to an attempt. There are four stages in every crime under the Penal Code: (1) the intention to commit (2) the preparation to commit, (3) the attempt to commit, and if the third stage is successful, (4) the commission itself. Intention alone or intention followed by preparation would not be sufficient to constitute an attempt. Intention, followed by preparation, followed by any act done towards the commission of the offence will be necessary to constitute an attempt. There is, however, no sharp line of division between a preparation and an attempt, and the question whether it is the one or the other must depend upon the circumstances of each case, and often it would be difficult

PENSIONS ACT (XXIII OF 1871), S. 4—*Applicability and construction—Suit relating to property subject of grant—No dispute as to fact or validity or as to persons entitled under grant—Claim of plaintiff in dependent of grant—Certificate—Necessity.*

The Pensions Act is to be construed strictly in favour of the subject. A suit relating to property which is the subject of a grant, in which the plaintiff's claim is independent of the grant, and in which there is no

meaning of S. 4 of the Pensions Act. No certificate is necessary in the case of such a suit under S. 4 of the Pensions Act (*Broomfield and Micks*)
DATTATRAYA v SADASHIV. 41 Bom L
AIR 1939 I

—S 12—*Deposit of pension papers as security for loan—Validity.*

Obiter.—A deposit of pension papers with a creditor by way of security for a loan is one of the class of transactions which S 12 of the Pensions Act was enacted to prevent (*Pankridge, J.*) IGNATIUS KOHDIRICK *In re.* I L R. (1939) 2 Cal 434=43 C.W.N. 1194
PLEADER. See LEGAL PRACTITIONER.

POSSESSION.

The right to redeem is so inseparable an incident of mortgage that it cannot be taken away by express agreement of the parties that the mortgage shall not be redeemable, or that the right shall be confined to a

the advance which he has made. The pledgee has no right of foreclosure since he never had the absolute ownership at law. In a mortgage the right to the property is transferred to the creditor; in the case of a pledge the pledgee has no property in the pawn but merely a right to sell. The principle of avoiding clog on the equity of redemption does not apply to pledges and hence parties can by special agreement introduce a clause into the agreement that on failure to redeem within a certain time, the property pledged would become the property of the pledgee (*Mackney, J.*) DWARIKA v. BHAGWATI. AIR 1939 Rang 413

POLICE ACT (V OF 1861), S. 34—*Construction.*

The words 'it shall be lawful for any police officer to take into custody without a warrant, any person who within his view commits any such offences' occurring in S. 34 of the Police Act is not to be construed as a conditional power rather it limits the power to certain police officers, not by any category or class but by the conditions existing at the time of the commission of the offence and any police officer witnessing the offence has an unlimited power of arrest (*Griffie, J.*) MAROTI BANSI TELI v EMPEROR I L R (1939) Nag 488=184 I C 231=12 R N 101=40 Cr L J 905=39 N L J 101=AIR 1939 Nag 85.

DIVERSE POSSESSION.

- (4) CO SHARER.
- (3) CR. P CODE S 144
- (4) EJECTMENT
- (5) LIMITATION ACT, ARTS 142 AND 144.
- (6) SPECIFIC RELIEF ACT

—*Equitable right to—When can arise—Building on the land of another*

Before a person building on the land of another can be said to have an equitable right to possession of the

ing by (*Bose, J.*) MEHERBAN LALLI v YUSUF
AIR 1939 Nag 7.

against the entire world consequently unless the defendant proves that he is the owner of the land in dispute, he cannot maintain his possession against the plaintiff who has purchased it from the Government and has title (*Nawal Kishore, C J.*) KALLU v YACA 1939 M L R 202 (Civ.)

—*Suit for—Proof required of plaintiff.*

Where a person is out of possession at the date of the suit and had been so for many years previously and he is

ERS

See (1) HINDU LAW—WIDOWS—

ADOPTION

(2) PRINCIPAL AND AGENT

(3) WILLS

POWER OF ATTORNEY—Construction—Authority for and demand monies, institute legal process to settle claims and perform other matters or—Power of agent to assign decree obtained by appeal

agent holding a power of attorney which authorizes to ask, demand sue for, recover and receive debts, goods chattels interest, dividends etc, institute legal proceedings or to resort to any other course allowed by the law for recovering and enforcing payment, to settle claims and to execute and in other matters or things, that may be necessary precedent for the purposes previously set out and taking to ratify his actions within the scope of his authority, has no authority to assign to a third person power obtained by his principal. The power confers no effective power to assign a decree, (*Leach C J Madhavani Nair J*) GOVARDHANDAS JAMNANI v FRIEDMANS DIAMOND TRADING CO., LTD

49 L W 375 = 1939 M W N 290 =

A I R 1939 Mad 543

—Construction—Document giving agent power of various things in connexion with suit including reference to arbitration—Power of agent to matter to arbitration out of Court when failure of some partners in a partnership to render accounts to the other partners had necessitated institution of a suit, one of the partners who were

ing portion must be read with the previous recitals

ts—Vested remainder—If parties vested remainder in immovable property is immovable

SFFTHAYANMA v VULLIPALEM

50 L W 192 = 1939 M W N 810 =

A I R 1939 Mad 802 = (1939) 2 M L J 600

PRACTICE

—Registration—When compulsory See REGISTRATION ACT, S 17 (1) (b)—POWER OF ATTORNEY 1939 R D 203.

PRACTICE

See also (1) FEDERAL COURT RULES

(2) JUDICIAL COMMITTEE RULES

(3) MADRAS CIVIL RULES OF PRACTICE

(4) MADRAS CRIMINAL RULES OF PRACTICE

(5) MADRAS HIGH COURT O S RULES

(6) A S RULES

(7) CALCUTTA HIGH COURT O S RULES

(8) LAHORE HIGH COURT RULES

Administration suit

Admiralty

Admission by pleader on point of law

Amendment See AMENDMENT

Appeal

Connected cases

Costs See also S 35 C P CODE

Decree See TITLE —DECREE ante

Duty of Court

Evidence See also EVIDENCE

Judgment

High Court

Mysore High Court

New plea

Parties

Pleadings See also C P CODE, O 6 7 AND 8

Precedents

Privy Council

Procedure

Preliminary

ntg

Suit—Pleadings See—Property

Suit notionally valued at Rs 800

for taxation—Basis See AD

41 Bom L R 413 =

A I R 1939 Bom 299

Dismissal action—Owners of ship

dead or bankrupt—Suit to be

—Jurisdiction See ADMIRALTY

A I R 1939 Sind 349

—Admiralty—Collision—Actionability See AD

ADMIRALTY A I R 1939 Sind 349

—Admiralty—Collision—Suit for damages—Main-

tainability and burden of proof See ADMIRALTY

A I R 1939 Sind 349

—Admiralty action—If party can succeed on

failure of opposite party to prove his case See AD

ADMIRALTY A I R 1939 Cal 513

Order on point of law

See LEGAL PRACTICE

181 I O 721

offering additional

appeal which have

See INTERPRETATION

SECTION

1939 N L J 514

Sue purporting to be

Competency—See

L R 1939 Kar 428

Decree under S 151

of aggrieved party—

DE S 2 (2)

41 Bom L R 800

by consent—Parties

agreeing to adoption of procedure extra cursum curiam

and to abide by decision of Court—Right of appeal—

If lost—Test—Intention of parties—Ascertainment

PRACTICE.

Where parties invite the Court to adopt a procedure which is not contemplated by the Code of Civil Procedure, and, in fact, the procedure is *extra, curiam curiae* they cannot turn round and say that the Court is to blame for the very procedure which they invited the Court to follow. The intention of the parties must be gathered in each case, and if the intention is clear that the parties are binding themselves by a decision might be given by the Court, no appeal, but if such an intention cannot be gathered, right of appeal is not shut out. In each appellate Court will try to find out what the true intention of the parties was, and the question whether an appeal lies or not will depend upon the conclusion arrived at by that Court. (*Manohar Lal and Chatterjee, JJ*)
CENTRAL INDIA SPINNING, WEAVING AND MANUFACTURING CO v. KHEMRAJ 18 Pat 261 = 181 IC 42 = 11 R P 565 = 5 B R 504 = 1939 P.W.N 151 = A I R. 1939 Pat 514
—Appeal—Competency—Jurisdiction to entertain and deal with appeal—Express pr Necessity See BIHAR AND ORISSA RECOVERY ACT, S 46

—Appeal—Competency—Memo
—Rejection on ground of insufficiency to give time to make up deficiency—Appeal from order of rejection—If lies. See C P CODE, S. 2 (2). 1939 P.W.N 162.
—Appeal—Competency—Order making more

either figures was of the same value.

Held, the appeal could be valued at any of the figures. (*Manohar Lal J*) MADAN LAL LAKSHMI NARAIN. 179 IC 790 = 20 P L T

A I R 1939 Pat 40
—Appeal—Decision in—Effect of—Reversal of decree in another suit—If can be implied.

and Y, which resulted in decrees being passed in their favour by the High Court on appeal. In the suit instituted by X, the defendants appealed to Privy Council impleading Y as a *pro forma* respondent. The Privy Council reversed the decision of the High Court.

Held, that the decree of the High Court became final and the decision of the X's suit did not have the effect of right which had been found by the High Court in Y. (*Harries, C.J.* and *Agrawala, J*) DHRU-BESHWAR LAL SINGH DEO v. KANTU LAIK. 5 B R 356 = 180 IC 127 = 11 R P 456 =

—Appeal—Forum—Determination of value of valuation or decreed amount. ASSAM CIVIL COURTS ACT, S 3

1939 A.W.R. (H C) 59
—Appeal—Interference—Appreciation of evidence by trial Court—Interference by appellate Court.

If evidence on oath coming from the mouth of a witness whom the Judge has seen is such that he cannot believe it, and there is good reason for his disbelief, a Court of appeal will not prefer its own appreciation of the oral evidence to that of the trial Judge. (*Davis,*

Y. D. 1939—61

PRACTICE.

J.C. and Tyabji, J.) GOPIBAI v. CHUHERMAL MUL-CHAND I.L.R. (1939) Kar 509 = 183 IC 717 = 12 R S 71 = A I R 1939 Sind 234.

—Appeal—Interference—Credibility of witnesses—Opinion of trial Court.

When a lot depends on the impression that witnesses

reasons the appellate Court would simply disbelieve the evidence and the evidence drawn from witnesses. (*BAR v. SHEO*)

—Appeal—Interference—Evidence of witnesses—Opinion of trial Court

highly improbable having regard to the circumstances in the case the Court of appeal would be justified in rejecting his testimony. (*Mitter and Rau, JJ*) KUMAR NARENDRA NATH ROY v. MIDNAPORE ZEMINDARI

all the members of a joint Hindu family including a the defendant the Court guar- the time fixed by in so far as that

respondent is concerned, the appeal becomes incompetent as against the remaining respondents also, and cannot be continued against the remaining respondents.

if the members of the joint family of the karta of the family and that he the suit on behalf of the family

makes no difference. The decree being in terms in favour of all the plaintiffs including the minor coparceners, all of them should be parties to the appeal.

The question of representation by the karta does not the in- against whose

rt, J.)

816 = 198.

—Appeal—Judgment—Necessary contents.

Even where the order of the first Court is confirmed the Court should state in fine himself to ap- of first instance or it been able to show

good grounds for interference in the order passed by the lower Court. The judgment should show on the face of it that the points in dispute were clearly before the mind of the Judge and that he exercised his own discrimination in deciding them. (*Kitchy, J*) ASTAN KHANQAH SHARIEF v. MANAWAR.

41 P L R J. & K. 23.

—Appeal—Letters Patent—Finding of fact.

PRACTICE

After two Courts have properly considered the

—Appeal—Letters Patent Appeal—Leave when given

Leave to file a Letters Patent Appeal is only given as a rule when there is a point of law of difficulty and importance about which the learned Judge granting leave entertains a doubt (*Stone, C J and Bose J*) **GANPATRAO v SHEIKH BADAR** 183 IC 341—12 RN 56=1939 NLJ 246—AIR 1939 Nag

—Appeal—Letters Patent appeal—Persons made party in appeal before single Judge—If impleaded in Letters Patent appeal

A person who has not been made party to the appeal heard by the single Judge cannot be impleaded in the Letters Patent appeal and that appeal so far as it relates to him is incompetent (*Addison and Kam Lal JJ*) **NUR MOHAMMAD v AM** 182 IC 959=12 R

—Appeal—Order passed after local inspection—Reversal without local inspection—Propriety

Where a suit relating to a plot of land was dismissed by the trial Court after inspecting the spot in the presence of the parties, the appellate Court should not set aside that order without inspecting the spot particularly when a definite request to that effect had been made (*Abdul Qayoom, C J and Wasir J*) **MAHOMAD KUCHI v MUNICIPAL COMMITTEE SRINAGAR** 41 PLR J & K 57

—Appeal—Procedure—Duty of appellate Court—Calling for private report from lower Court—Propriety of

by the C P Code It is a most unusual proceeding for the lower Court to call for a private report from the lower Court shown to the parties (*Harries C J*) **PRATAP UDAI NATH SHAH DEO v SUKHDEO PRASAD BHAGAT** 12 PLR 220

—Appeal—Question of law Judge to Division Bench—Practice See LAHORE HIGH COURT KU

—Appeal—Refusal of leave Letters Patent—Appeal against (MADRAS) CL 15,

50 LW 202—1939 MWN 734

—Appeal—Remand—Further evidence directed to be recorded by lower Court—Letter getting it recorded by Subordinate Court—Practice

Where a case is remanded in appeal to the lower Court with a direction to record further evidence on the further issue framed by the Appellate Court and return the same with its finding the lower Court should not leave that work to be done by a Subordinate Court but

PRACTICE

—Appeal—Successful party—If can appeal against

MA LON v MA MYA MAY 179 IC 946=11 RR 363=AIR 1939 Rang 59

—Appeal—Suit for accounts—Appeal by defendant—Absence of cross appeal by plaintiff—If fatal to claim in respect of items decided against plaintiff by lower Court—Procedure

In an appeal by the defendant in a suit for accounts, the omission of the plaintiff to file a cross appeal in which have been decreed of the trial Court under appeal by claiming credit for items not allowed by the trial Court at least as against other items on which the appellate Court might be inclined to vary the directions of the trial Court (*Varadachariar and Abdur Rahmar JJ*) **VASANTA RAO ANANDA RAO**

—Connected cases—Duty of lower Courts

In connected cases, when one of them has been decided by the Board, the lower Court should follow the view taken by the Board (*Bomford S M and Mehta, J M*) **MAHOMED MUKHTAR KHAN v MT NASI MUNISSA** 1939 AWR (BR) 42 (1)

—Costs—Appeal—Summary dismissal—Appal to High Court allowed—Costs throughout—If allowed—Costs of appeal to lower appellate Court—If included See COSTS—APPEAL 41 Bom LR 949

—Costs—Suit for accounts—Time for awarding costs

The general rule as to costs in a suit for accounts is that the final decree is the final decree and the nature of the case is not possible to Therefore, the

complete omission of the Court passing the preliminary decree to mention the subject of costs can only be interpreted as meaning that that Court has intended to follow the general rule and to reserve the question of costs until the time of the final decree That being so, the order of the Court awarding costs in the final decree should

1 are the costs 41 CAN DAS 12 RL 77=39 Lah 255 Co-operative Mysore See Iya LJ 436

—Duty of Court—Comments on witnesses

A Court is not justified in commenting adversely on witnesses by reference to materials which are not properly proved on the record (*Abdul Rashid, J*) **KAM SARUP v EMPEROR** 41 PLR 265

—Duty of Courts—Finding legal origin for practice

When Courts find in vogue a long continued practice which has been followed without question or objection for a number of years and which has affected for better

PRACTICE.

Legal adviser before making decision

If a party has a legal adviser present in Court ought to be given an opportunity to consult him being asked to make any decision. (*Norman I AMAR CHAND v. BHOLA NATH*, 1939 A.M.L.

Duty of Court—Preliminary point

most cases be saved needless expense and at the worst the issues would be more clearly determined. (*Dalip Singh and Slemf, JJ.*) GHULAM MOHY UD DIN v. MT. KUQIYA. 41 P.L.R. 615=

A.I.R. 1939 Lah. 168

Duty of Court—Remarks on conduct of parties—Limits of.

Courts are no doubt at liberty to discuss the conduct of the persons before them, either as parties or as witnesses, untrammelled by any considerations. But they are not permitted to travel beyond the record and are

40 Cr.L.J. 655=12 R.L. 8=41 P.L.R. 74=
A.I.R. 1939 Lah. 174.

Evidence—Admission of documents—Duty of Court.

Judges should discriminate between documents which are admissible in evidence and are proved and documents which are not, and decline politely the invitations, however tactful, to accept and exhibit bundles (*Davis, J* RAI v. GOPALDAS, 183 I.C. 797=12 R.S. 81=A.I.R. 1939 Sind 177.

Evidence by affidavit after completion of hearing—Power of Court to take—Proper procedure.

A Court is not entitled in a suit to take evidence by affidavit after the hearing of the suit has been completed. If it becomes necessary to secure a party's evidence

PRACTICE.

v. ALAM SHER
41 P.L.R. 261.
in the motives of

regret that the

High Court should, in their judgment, have cast imputa-

criticism of, and imputations upon, the honesty of an expressed in language which may tend to hurt from forming and expressing an of the result of the evidence brought precatory (*Lord Porter*.) MAHBUB

SINGH v. ABDUL AZIZ KHAN.

I.L.R. (1939, Kar 54 (P.C.)=1938 A.L.J. 1223=
5 B.R. 157=1939 M.W.N. 15=43 O.W.N. 252=
1939 P.W.N. 57=41 Bom. L.R. 668=
1938 A.W.R. (P.C.) 206=1938 O.W.N. 1216=
1938 O.L.R. 430=178 I.C. 386=
A.I.R. 1939 P.C. 8 (P.C.).

Injunction. See C. P. CODE, O. 39.

Judgment—Omission to mention some pieces of evidence relied on—If makes judgment unsound.

It is impossible to hold that a judgment cannot be

12 R.P. 59=A.I.R. 1939 Pat 221

Letters Patent—Appeal—Refusal of leave—If second application, if less See LETTERS PATENT (NAGPUR), CLS. 10 AND 27. 1939 N.L.J. 535.

Mysore High Court—Rescission—Limitation.

Though no period of limitation is prescribed in Mysore for a rescission of a contract, the practice

17 Mys L.J. 267.

Mysore High Court—Second appeal—Order of restitution under inherent powers—Appeal wrongly entertained—Second appeal See MYSORE C.P. CODE, SS. 144 AND 151 43 Mys H.C.R. 523.

New plea—Appeal—Decree for ejectment passed—Plea of partial ejectment not taken in trial Court—

decree for ejectment is passed against the he prefers an appeal from the decree, it is not for him to make out a new case in appeal by that the suit was bad for partial ejectment to raise such a plea (JOGENDRA NATH A.I.R. 1939 Cal 486, by pardanashin- ty for first time in O.V.—DEED BY. 1939 P.C. 159 (P.C.). and question of law and

PRACTICE.

—*New plea—Appeal—Objection regarding non registration of document*

An objection as regards non registration of a document cannot be taken for the first time if the necessary evidence as regards the property is not on the record. (*Bhile*)
GHULANI 41 P L R 390 = A I R 1933 Bom 425

—*New plea—Appeal—Plea of absolute privilege in defamation suit*

A plea of absolute privilege can be raised by way of defence to a suit for damages for defamation for the first time in appeal as no investigation of fresh facts is necessary and the plaintiff is not in any way taken by surprise. (*Ghose and Mukherjee*)
D 1 MADHAB CHAND

1

A point of limitation can be raised for the first time in appeal and any question of limitation must be taken by the Court. (*Retinnot, C J and Wadia, J*)
NARBHERAMJI v VIVEKRAMJI

I L R (1933) Bom 564 = 41 Bom L R 939 =
A I R 1933 Bom 425

—*New plea—Appeal—Plea of limitation*

Plea of limitation is not a pure question of law and facts are always necessary for the first time in Appellate material on record for the Court to come to any finding on that point, the plea cannot be permitted to be raised in appeal. (*Mysa Ru Offr C J and Duckley, J*)
KAMANNA REDDY v ABINUL KASHID

180 IC 300 = 11 R R 386 =
A I R 1939 Rang 42

—*New plea—Appeal—Plea of limitation*

If the defendant deliberately abandons the plea of limitation in the Court of first instance he cannot be allowed to raise the question for the first time in appeal if the facts found do not enable the Appellate Court to decide it and new findings would have to be obtained. 25 Mad 55 Full. (*Nawal Kishore C J and Kancherla, J*)
VIRDICHAND v LOONANCHAND

1939 M L R 115 (Civ)

—*New plea—Appeal—Question of law—Plea of interest*

The question whether plaintiff is entitled to claim interest on transactions in the suit is purely a question of law and where facts on record about the question are admitted or proved beyond controversy the plea of interest can be raised in appeal even for the first time. 1939 M L R 115 (Civ)

A I R 1933

—*New plea—Bar of partial pre-emption—Plea raised in second appeal for first time*

The plea that a suit for pre-emption is bad in that it is for the pre-emption of only a portion of the property sold, is one that could be permitted to be raised for the first time in second appeal, if it does not require any fresh evidence and could be decided on the admitted facts. (*Zia ul Hassan*)
18 IC 10 = 1939 A W R (C) 271 =
1939 O L R 631 = 1939 O W N 1026

—*New plea—Plea of investigation of facts—If can be raised at hearing of appeal*

An appellate Court ought not to allow lightly a plea involving investigation of facts to be taken for the first time at the hearing of the appeal. (*Venkataram's Rao*)

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and Abdur Rahman J J) MANAVENDAN v VIERAYAN UNNI 1939 M W N 458 = A I R 1939 Mad 751.

—*New plea—New case not made out in plaintiff's*

set up in the plaintiff. (*Muhammad Noor and Dharle, J J*) JANARDAN PARIDA v PRANDHAN DAS

8 O L T 45
—*New plea—New case—Appeal—Power of appellate Court to spell out*

The High Court cannot in appeal spell out a new case without any trace thereof in the pleadings and evidence and resting on no substantial evidence which can be held good. (*R. K. D. v. R. K. D.*)

L D

—*Amendment of pleadings—If can be considered—Amendment of pleadings—Necessity*

Although a judgment will not be set aside merely because certain issues have not been framed if those issues have been argued and considered yet it is to be

ings conducted in a fair and proper manner. Order passed in such a case without the amendment of pleadings cannot be sustained. (*Davis J C and Weston, J*)
MIR HAJI GHULAM SHAH v KHANCHAND
I L R (1939) Kar 330 = 182 IC 151 = 11 R S 250 =
A I R 1939 Sind 137.

—*New plea—Plea not raised in defence*

Where a claim has never been made in the defence presented no amount of evidence can be looked into upon a plea which is not a defence. (*Rasput J J*)
BIBI 1939 A

—*New plea in revision*

A plea based on facts but not raised nor argued in the lower Court cannot be raised for the first time in revision. (*Davis, J C and Tyabji, J*) TARACHAND KHINANDAS v SYED ABDUL KAZAK SHAH
I L R (1939) Kar 422 = 182 IC 226 = 12 R S 4 =
A I R 1939 Sind 125

—*New plea—Plea that agreement is void as opposed to public policy—Fresh plea in revision that agreement*

was that opposed to

the agreement was void as being fraudulent on the same facts could be raised as the other party was not misled. The facts were the same though the names by which they were described may be different. (*Davis J C and Vekha, J*) ATUMAL RAM JOMAL v DIPCHAND KESSUMAL. I L R (1939) Kar 147 = 179 IC 901 =
11 R S 162 = A I R 1939 Sind 33

—*New plea—Plea of limitation—Application for first time in appeal—Duty of Court to take note of*

See LIMITATION ACT, S 3 20 Pat L T 124

—*New plea—Privy Council—Objection to reception of evidence*

Although too much stress cannot be laid on the fact that parties to a suit unaided by legal assistance took no

PRACTICE.

one and the same holding (*Agarwala, J*) SARPA-
RAYAN SAMAY & BATA PATENTED SARAYAN BHUNJ
5 C.L.T. 6.
e. See HENGAL

43 C.W.N 194.
 — *Pleadings*—*Alternative claims*—*Claim to ownership*
and in the alternative to easement—*Absence of issue*
as to ownership—*Issue as to easement alone framed*—
Right to relief on basis of easement—*If precluded by*
reason of claim to ownership.

Merely setting up a claim to ownership of land does not prevent a party from establishing a right to an easement in respect of that land. The plaintiff sued to re-train the defendants from allowing the water from a *morat* and spoons on the defendant's building to enter upon the plaintiff's open site. The defendants in their written statement maintained that they were owners of the vacant land on which the water was discharged, and alternatively they claimed an easement to discharge water through the *morat* and the spoons over the land, assuming that the land was the plaintiff's. No issue was framed as to the defendant's ownership of the land, and the defendant's claim for an easement was not put in issue.

[illegible]

ownership, from an easement and were doing the use an easement under a claim of ownership (Dumont, C / and Sen.

ILR (1939) Bom 140 = 15 SIC 139 =
12 RB 69 = 41 Bom LR 168 =
AIR 1939 Bom 119.

Pleadings—Amendment of plaint pending notice of motion—Effect on notice of motion—Abandonment—Motion not raised by defendant in time—Effect—Error.

The amendment of a claim or the statement of claim pending a notice of motion operates as an abandonment of the prior motion, unless the parties agree to leave the motion open for further amendment. The court will not allow a party to amend its motion as it is too late to do so.

unless saved by the order of the Judge allowing the amendment to be deemed to have been abandoned. But if the defendant does not raise this objection when the motion is brought on, but tenders an affidavit on the motion to which the plaintiff tenders an affidavit in answer it must be held that the defendant has waived the objection that was available to him to be raised when the motion is brought on. He cannot raise the objection afterwards and the notice of motion must proceed as if no objection has been raised. (See *see*) GOVIND RAM v. SHIVNARAYAN 41 Bom L.R. 515

Pleadings—Amendment—Suit as full owner and disclaiming benami character—Case found against—Plea persisted in appeal—Application at late stage for amendment to make claim one as benamidar—Permissibility.

Plaintiff sued for the recovery of a money alleging that the same bel that she had deposited the same. There was no suggestion either in

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deposition that she was a benamidar for her husband. Her case was however found to be false but she persisted in the falsehood even in appeal. Arguments the Counsel for plaintiff of the plaint so as to make it a

Held, that the plaintiff must be held bound by her false and perjured case in which she persisted even in appeal and could not be allowed to amend the plaint and that it was not open for the Court to set aside on plaintiff's deposit under O 21 R 89—Prayer to restrain decree holder from withdrawing amount deposited—Amendment to add—Competency *See C P CODE O 21, R 89 (2)* 20 P L T 640

—Pleadings—Amendment—Suit under O 21 R 63 by defeated claimant—Sale held pending suit—Sale set aside on plaintiff's deposit under O 21 R 89—Prayer to restrain decree holder from withdrawing amount deposited—Amendment to add—Competency *See C P CODE O 21, R 89 (2)* 20 P L T 640

—Pleadings—Mysore High Court—Adverse possession—Plea of—If to be "specifically" raised—Form and contents of plea

It is not necessary that a plea on which a party relied should be pleaded. It is sufficient to state that the party had been in possession without interruption for over 12 years and the necessary issues are raised covering the matter. The use of the legal phrase adverse possession is not absolutely necessary for granting relief on that ground. *Singaravelu Mudaliar JJ*

v TIRUNARAYAN

—Pleadings and proof—Power of Court to grant decree on alleged lease—Inference drawn.

There may be cases where justice demands on the facts proved that the relief should be granted although the facts proved are not those pleaded, but generally it

AIR 1939 All 728

—Pleadings—Proceedings of statutory bodies—Alteration of invalidity—Clear and full particulars—Necessity for.

Any attack on the validity of proceedings of a statutory body such as the Municipal Committee must be clearly defined and proved and particulars of the matters complained of must be given. *(Worl, J)*

—Pleadings—Suit by or against idol—Description of cause title—Mode of—Proper or apt description

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In considering whether what is the proper and apt title by which an idol or a deity sues or is sued, it is the duty of the Court to determine the proper title by which the idol may be stated first, as the shebait or manager, the order may be reversed by giving the name of the shebait or manager as so and so shebait of the deity, etc. either of which descriptions would comply with the rules and would aptly describe the deity. The mere first or the she taken as conclusion.

DEOKI SINGH v RAGHVINDRA BHAGWAN 183 IC 371= 5 BR 922=12 RP 185=1939 PWN 229= AIR 1939 Pat 430

—Pleadings—Variation—Test—Duty of Court

Pleadings should not be construed too narrowly, and in dealing with the question whether there has been a variance between the plaintiff's pleadings and the case alleged at the trial the Court must look not to the mere wording of the plaint but to the issues which were settled for the trial and to the manner in which the case was fought out by both parties in the trial Court. If a case not alleged by the plaintiff, is disclosed in the

to be set up provided a defendant is given. *Tek Chand and Bhide, N v SECRETARY OF AIR 1939 Lah 330*

—Precedents—Decisions based upon conceptions altered by later legislation—Value in construing the new Act

conceptions which subsequent legislation using the meaning of technical significance be later enactment. *APRASAD v ITWAR AIR 1939 Nag 287*

—Precedents—English decision—Citation of, in interpreting Indian Acts—Propriety of Citation of English authorities to consider Indian Statutes which are not in *pari materia* is not proper. *difference between Manohar Lall and MADHO PRASAD v GOURI DUTT 2=5 BR 874=12 RP 101 (2)= P L T 825= AIR 1939 Pat 823*

—Latest Bench cases—Duty of judges should be followed in preference to those decided by a single Judge.

(Hamill)

—Pleadings—Proceedings of statutory bodies—Alteration of invalidity—Clear and full particulars—Necessity for.

Any attack on the validity of proceedings of a statutory body such as the Municipal Committee must be clearly defined and proved and particulars of the matters complained of must be given. *(Worl, J)*

—Pleadings—Suit by or against idol—Description of cause title—Mode of—Proper or apt description

When can be ignored. Considerations of *Stare decisis* should not prevent a Court from giving effect to what it conceives to be

—Pleadings—Suit by or against idol—Description of cause title—Mode of—Proper or apt description

PRACTICE.

the law. More so when security of title would not be affected nor would injustice result. (*Stone, C.J. Grille and Bose, J.J.*) RAMDAVAL MUNNALAL v SHEO DAVAL. I.L.R. (1939) Nag 250-183 I.C. 128-12 R.O. 43 (2)-1939 N.L.J. 228-12 R.O. 251-43 C.W.N. 133-183 I.C. 191-12 R.P.C. 61 (1) (P.C.).

—*Privy Council—Appeal—Concurrent findings of fact—Interference.*

It is the practice of the Privy Council not to hear arguments seeking to disturb concurrent judgments in the Courts below on pure questions of fact. (*Lord Thankerton.*) CHIEF KWEKU SERREH v. OHENE KOEINA KARIKARI. 183 I.C. 191-12 R.P.C. 61 (1) (P.C.).

—*Privy Council—Appeal—Concurrent findings of fact—Interference.*

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unless within that pale there has been so manifest a violation of the principles of natural justice that their Lordships are satisfied first, that the result arrived at was opposite to the result they themselves would have reached and, secondly, that the same opposite result would have been reached by the local tribunal even in the absence of an irregularity. (*Costello and Naum Ali, J.J.*) EMPEROR v. CYRIL BERTRAM PLUCKNETT. I.L.R. (1939) 1 Cal 187-184 I.C. 614-12 R.O. 251-43 C.W.N. 133-183 I.C. 191-12 R.P.C. 61 (1) (P.C.).

—*Privy Council—Findings of fact—Interference—Findings based on evidence of witnesses.*

Where the trial judge, who had the great advantage of hearing the evidence of witnesses at first hand and of

—*Privy Council—Concurrent findings of fact—Duty of appellant.*

Where the Courts below have findings of fact it is incumbent on the appellant to satisfy the Privy Council without any shadow of doubt that such findings are erroneous. (*Lord Romer.*) EBRAHIM LEBBE MARIKAR v. ARULAPPA PILLAI. 12 R.P.C. 10-182 I.C. 4-12 R.O. 43 (2)-1939 N.L.J. 228-12 R.O. 251-43 C.W.N. 133-183 I.C. 191-12 R.P.C. 61 (1) (P.C.).

—*Privy Council—Concurrent findings of fact—Admission of inadmissible evidence.*

The Privy Council will not disturb the findings of the Indian Courts on the ground of admission by them of certain inadmissible documents, when the findings cannot, on any reasonable view of the case, be regarded as based on such documents. (*Sir George R. J. J.*) KEOLAPATI v. AMAR KRISHNA NARAIN SINGH. 44 C.W.N. 66-12 R.P.C. 73-6 B.R. 1-1939 O.L.R. 553-183 I.C. 662-12 R.P.C. 249 (P.C.).

—*Privy Council—Concurrent findings of fact—Interference—Practice.*

Where before arriving at the findings of fact both Courts in India have subjected to a pains taking, minute and accurate scrutiny the voluminous and contradictory evidence before them, their Lordships of the Privy Council would be slow to depart from the practice which, though not a rule of

—*Privy Council—Practice—Appeal having no relation to existing rights—Validity of Act repealed.*

arguments as to the validity of an Act which has, since the decision of the Court below, been repealed and cannot, therefore be brought into operation—Such an appeal is of no practical interest. (*Lord Chmellor.*) ATTORNEY GENERAL OF ALBERTA v. ATTORNEY GENERAL OF CANADA. 1933 A.C. 117-180 I.C. 807-11 R.P.C. 189-1939 M.W.N. 142-12 R.P.C. 249 (P.C.).

—*Privy Council—Suit for administration and accounts—Examination of details of accounts—Practice.*

It is not the practice of the Board of the Privy Council to embark on a minute examination of the details of accounts which were subjected to a careful scrutiny by the Court below.

—*Procedure—Accounts—Suit for preliminary decree—Necessity for—Defendant suppressing accounts—If justifies final decree straightaway.*

The law is well settled that in suits for preliminary decree directing accounts to be taken, the preliminary decree should be passed before passing a final decree. The fact that the defendant has suppressed the accounts is not a ground for departing from this normal course and passing a final decree.

—*Privy Council—Criminal cases—Interference—Practice.*

The Judicial Committee will not interfere with the course of criminal law unless there has been such an interference with the elementary right of an accused as has placed him outside the pale of the regular law or

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in strightaway passing a final decree for the amount claimed, though the Court may draw an inference adverse to the defendant consequent on the non production of accounts (*Leach, C J and Madhavji Nair, J*) **PALANIAPPA CHETTIAR v RAMANATHAN CHETTIAR** 1939 M W N 360 = 49 L W 608 = A I R 1939 Mad 671

—Procedure—Application for leave to sue receiver or to execute decree—*See* **1939 A L J (Supp) 88**

—*See*
—*See*
—*See*

It is their incumbent duty of for all Revenue Courts working under the Board of Revenue, to give at the top of judgments at the proper place, full names of parties. The method of writing etc. is apt to bring about perpetuation of mistake in the matter of non joinder or misjoinder of parties in appeal (*Marsh, S M and Mehta, J M*) **MAHANGOO v RAM KISHUN DAS** 1939 A W R (B R) 113 = 1939 E D 437 = 1939 A L J (Supp) 88

—Procedure—Sale by Receiver under Court's direction—Rule as to advertisement and notice of

RECEIVER—**Sale by** 1939 M . . .

—Proceedings for probate—When begun

—*Locus standi*—*See* **1939 M . . .**

—Proof—**ADMIRALTY ACTIONS** A I R 1939 . . .

—Relief—Claim to under relief—Decree, *relief*—Right to

—*R* share of non—*R* joinder tion by favour o

Where property belonging to several tenants in common is in the possession of a adversely to them, it is open to recover possession of his share or property. When one tenant in common possession of the entire property to join as parties to the action o

other tenants in common to claim partition and possession of their shares, nor would it be proper for the Court to pass such a decree. The suit in essence is one in ejectment against a stranger who is not interested in the claim for partition among the co-tenants. The delivery of the plaintiff's share is incidental and for that purpose the other co-tenants may be proper parties but the actual

PRE-EMPTION.

—Relief—Pleading and proof—Variation—Effect—*Suit on title*—Decree on possession—Power to pass

There is no inflexible rule of law that under no circumstances can a decree be passed on the strength of the plaintiff's possession in a suit based primarily on title, unless such possession has been specifically made the ground of relief in the plaint. The underlying

—Relief—*Suit on promissory note*—Plaintiff alleging jointness with father but separation from nephews—Separation not proved—Decree in favour of plaintiff as karta of joint family—If can be granted—Admission by

parties had been separated from the joint family and the Court finds that neither the alleged separation of the

of *See* T P ACT, S 43 A I R 1939 Pat 116

PRECEDENTS *See* PRACTICE—PRECEDENTS
PRE-EMPTION—Claim by plaintiff as co-sharer—Bare denial of status by defendant—Effect—Status how to be proved—Entry in khewat—Value

Where a plaintiff sues for pre-emption on the ground that he is a co-sharer in such a mahal or in such a

statement does not mean anything more than a denial

75-1939 O L R 537 = A I R 1939 Oudh 233
—Enforceability against

A covenant for pre-emption is not a restrictive covenant in that sense of the term. Therefore such a covenant cannot be enforced by a representative of the covenantor against a representative of the covenantor (*Henderson and Latifur Rahman, J J*) **HARIDHAN CHATTERJI v SAILARALA DEVI** 183 I O 750 = 12 E O 178 = A I R 1939 Cal 421

plaintiff fixed and is right to a person

PRE-EMPTION.

is quite competent. (*Pollock, J*) LAXMAN RAMA CHANDRA v. WASUDEO 182 I.C. 962 = 12 E.N. 43 (1) = 1939 N.L.J. 160 = A.I.R. 1939 Nag. 120

—Decree for—Deposit within time—Reversal of decree on appeal—Withdrawal of deposit—Pre-emption decreed in second appeal by High Court—Time for payment not extended—Inference.

Where a plaintiff's suit for pre-emption is decreed and he deposits the price within the time allowed by the decree but withdraws it on the reversal of the decree in appeal and where he ultimately succeeds in second appeal in the High Court which however did not extend the time for payment, the natural inference is that the High Court permitted the plaintiff to deposit within a reasonable time. A deposit after the decree of the High Court should be treated as one in time. (*Niyogi, J.*) KISAN DEWALOO MALI v. GANGA BAI JAIRAM MALI. 1939 N.L.J. 475 = A.I.R. 1939 Nag. 279

—Decree for—Execution—Decree directing deposit and awarding costs to both parties—Deposit deducting costs—Defendant's costs not deposited—Effect—C. P. Code, O. 21, R. 19 (b), if applies.

Where an appellate Court decrees a suit for pre-emption conditional on the plaintiff's paying a particular sum within a specified time and both to the plaintiff and defendant differer costs and the plaintiff deposits the amount as directed

plaintiff is entitled to deduct from the amount he is directed to deposit, the amount of the costs awarded to him. But he is not bound to give credit to the defendant's costs unless the decree specifically so directs him. The provisions of sub R. (b) of R. 19 of O. 21 is not strictly applicable. It empowers suits but to execution, in regard to arise (*Tam C. J.*) PRASAD v. BHAGWANJI. 111 I.L.R. (1939) All. 261 = 181 I.C. 497 = 11 R.A. 571 = 1939 A.L.J. 48 = 1939 A.W.R. (H.C.) 80 = A.I.R. 1939 All. 258

—Decree for—Scope of appeal—Power of appellate Court to interfere with price and time for payment.

(*Pollock, J.*) SARJABAI v. BHAGWANJI NAGOJI 181 I.C. 895 = 11 R.N. 490 = 1939 N.L.J. 76 = A.I.R. 1939 Nag. 140

—Partial pre-emption—Sale comprising lands in different pattis—Separate suits by different individuals as regards their respective pattis—If offends rule against partial pre-emption

Where lands situated in different pattis are sold by a single sale deed and separate suits for pre-emption are filed by different co-sharers as regards their respective pattis and where vendor and the vendee are all co-sharers but the plaintiffs are co-sharers in the

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PRE-EMPTION.

their suit for pre-emption cannot be dismissed on the ground of partial pre-emption. For the plaintiffs could not possibly sue for the portion of the property which did not lie in their own patti because in respect of that they were no better than the vendee himself. (*Iqbal Ahmad and Bappu, J.J.*) RAM GHULAM v. RAM BHAIYAN. 111 E.L.R. (1939) All. 282 = 181 I.C. 805 = 11 R.A. 612 = 1939 R.D. 107 (2) = 1939 A.L.J. 167 = 1939 A.W.R. (H.C.) 99 = A.I.R. 1939 All. 226

—Pre-emption of part of property—Rule against. Where all that was sold under the sale deed cannot be pre-empted, as the law does not allow a plaintiff to pre-empt a part only, the suit for pre-emption in such a case must fail. (*Hamilton and Srivastava, J.J.*) ABDUL HAFIZ v. MANOHAR LAL. 183 I.C. 601 = 12 R.O. 44 = 1939 O.W.N. 736 = 1939 O.A. 583 = 1939 A.W.R. (C.C.) 111 = 1939 R.D. 455 = 1939 O.L.R. 637 = A.I.R. 1939 Oudh 233

—Right, nature of—Strict compliance with conditions—Necessity—C.P. Code, O. 20, R. 14—Significance of.

The right of pre-emption is a very special right. It displaces ordinary legal rights and places restrictions upon normal rights of conveyance. That being so a

plaintiff's favour passes without effect in the defendant's favour. 181 I.C. 616 = 1939 N.L.J. 13 = 1939 Nag. 107

—Right of—Partial pre-emption—Rule as to. The principle that the pre-emptor is bound to take the whole bargain is a principle which may be admitted to the extent that the pre-emptor cannot omit to claim any portion of the property comprised in the bargain to

portion of that part of the property over which he has a right, his entire claim must fail (*Nawab Kishore, C.J. and Sukhdeonaram, J.*) SURJAMAL v. PUKHRAJ. 1939 M.L.R. 19 (C.).

—Right of—Pre-emptor having superior right over portion—Right to pre-empt other portion.

—Right of—Purchaser of property transferring it by exchange before pre-emption suit to another person having equal right—Pre-emptor's suit—if can succeed.

Where the purchaser of property transfers it before the institution of a suit for pre-emption to another person having an equal or superior right to the pre-emptor in recognition of that person's right to pre-empt, then the pre-emptor cannot succeed. The basis of this principle is that a person with a right to enforce pre-emption cannot transfer his right and thereby defeat a

of pre-emption who has his right. There whether such

PRE-EMPTION

enforced out of Court by means of a sale or by means of an exchange (*Almond v C*) MAHMOOD SHAH v DAUD 179 IC 145=11 R Pesh 60= AIR 1939 Pesh 3

—Right to—Waiver—Pre auction and failure to offer amount—Effect of

Attendance at an auction sale emp'tor from later pre empt'ng the not bound to bid at an auction sale bid, he does not lose his right of title being that he is entitled to at the price fixed and paid and that price higher by competitive b emp'tor's attendance at the auction an amount equal to the highest silence for nearly a year does n (*Addison and Lam Lall, JJ*) ALLAH DIN AIR

—Sale of a doubtful right—Test

Where in a suit for pre emption, raised that the sale is of a doubtful rule can be laid down for determining such a right must be held to be doubtful the kind must be judged on its own circumstance that a person is out of enough to make a right doubtful On held that the title in this case was not

AIR 1939 Oudh 233

a good guide to help in determining the market value if it cannot be otherwise determined The burden of

—Suit for—Purchase simultaneous with purchase of house in dispute—If can defeat pre empt'

As a purchase of property after the suit for pre emption which has the effect vendee an equal right of pre emption emp'tor, is sufficient to defeat the suit reason why a purchase simultaneous with the purchase of the house is not a bar to the emp'tor's title the purchase of the emp'tion over the vendee, and the burden lying upon him the suit must fail If the vendee can defeat the pre emptor's claim by buying property prior or subsequent to the suit he can also do so by buying such other property simultaneously with the property in dispute (*Addison and Lam Lall, JJ*) KAWAL KRISHAN v JAIN BROTHERHOOD, LUD-

PRESY S C C ACT(1882) S 28

HIANA ILR (1939) Lah 164=183 IC 721= 12 RL 131=41 PLR 348= AIR 1939 Lah 77 —Vendee benamidar for co sharer with preferential right of pre-emption—Suit against title

parties the matter was referred to an arbitrator who found that the servant was employee of the company and servant is of the

y decree ll Cause Court thus having jurisdiction to try the suit, the arbitrator was justified in deciding that the servant was an any The servant was therefore terms of the award (*McNair, v INSURANCE SOCIETY, LTD v AIR 1939 Cal 489*

action and scope—Superstructure in execution of decree of Small going to judgment debtor—Claim right—Order allowing—Suit to set City Civil Court—Madras City

Where in execution of a decree of the Presidency

structure which the judgment debtor is entitled to re ndlord is movable e Presidency Small ose of deciding all e decree The City ntertain such a suit to set aside a claim order under S 3 of the Madras City Civil Court Act Nor would S 5 of the City Civil Court Act enable the City Civil Court to entertain the suit which is cognizable by the Small Cause Court For purposes of S 28 of the Presidency Small Cause Courts Act, there is no distinction between question arising in

PRESY. TOWNS INSOL. ACT (1909), S. 7.

execution and questions arising "out of" execution
(*Burn and Lakshmana Rao, JJ*) *SADAIAMMAL v*
ANGAMMAL 184 I.C. 516 = 12 R.M. 462 =

1939 M.W.N. 582 = 50 L.W. 133 =

1939 M.W.N. 582 = 50 L.W. 133 =

Under S. 7 of the Presidency
only those orders can be made w
the purpose of the insolvency, the
taking the distribution of the assets among the creditors

the insolvent to pay any portion

follows from the above that the Court has no power
under S. 7 of the Act to direct a creditor of an insolvent

client—Effect of.

—S. 53—After debtor's insolvency creditor obtain
ing award against debtor and surety—Subsequent com-
position or annulment of insolvency—Creditor's right
to execute award against surety.

Where after the insolvency of a debtor, the creditor
proceeds against the debtor and the sureties for the
realization of the debt and an award is drawn up with-
out objection from the debtor, the contract of suretyship
merges into the award so that after the passing of the
award the creditor's rights against the sureties arise
under the award and not the original contract of surety-
ship. The sanction of any subsequent scheme of com-
position or the annulment of the insolvency proceedings
following it, does not make any difference to those rights
nor does it operate to absolve the sureties' liability under
the award. These rights of the creditor are not affected

PRESY. TOWNS INSOL. ACT (1909), S. 53.

mination under S. 36, S said that the insolvent owed
him a certain sum, that he received some precees
from the Bank after paying it whatever was due and
that on the sale of the goods there was a profit of

Field. that the deposition of S contained a great deal

PALIRAM In re.

I.L.R. (1938) 2 Cal 633 =

14 = 12 E.C. 238 = A.I.R. 1939 Cal 286

—Scope—Companies Act (as amended in

and 230 (1) (e)—Company—Winding

—Assets—Assets—Assets—Assets

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should be at liberty to raise or advance money in order
to clear those goods lying in deposit with the Bank and
to sell them and reimburse themselves. Upon his exa-

not constitute the attaching creditor a secured creditor,
within the meaning of S. 53 (2) of the Presidency T-
Insolvency Act. (*Beaumont, C.J.* and "

PRINCIPAL AND AGENT.

question is not whether the work of the agent has been continuous, but whether the contract is continuous. Where there is no subsisting right to account as between the parties in respect of a prior, independent contract of agency, any amounts due to the agent in respect of that agency cannot be taken into account to reduce his liability in a suit for accounts in respect of a separate contract of agency which is an independent bargain between the parties (*Varadachariar and Abdur Rahman, J.J.*) **VASANTA RAO ANANDA RAO v. GOPAL RAO SETHU RAO.** 1939 M.W.N. 1046 (2)

—Accounts—Suit for—Books of account returned to principal—Principal, when entitled to preliminary decree.

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ment of the matters objected to and of what balance he claims to be in his favour. (*R. Menon and Chatterji, J.J.*) **BADRINATH UPADHYA v. KESHO KUMAR.**

6 B B 49-12 E.P. 216-181 I.C. 495

—Authority of agent—Proof.

Where a person has been acting as manager of a company for a long period and has been transacting all the business of the company as such manager, including the acceptance and endorsing of the bills of exchange of the value of several lacs of rupees, this fact alone is sufficient

... ..

Even apart from the special rule of agency, the onus would be on the agent who pleads a benami transaction (*Varadachariar and Abdur Rahman, J.J.*) **VASANTA RAO ANANDA RAO v. GOPAL RAO SETHU RAO**

1939 M.W.N. 1046 (2)

—Duty of agent to accept business—Course of dealing—Acceptance on former occasions—If involves agent in obligation to accept fresh business in future **See CONTRACT—PAKKA ADALIA.**

41 Bom L.R. 308

—Duties and liabilities of agent—Agent when liable to pay interest.

In a suit by a principal against his agent for accounts and for recovery of amount that may be found due where the agent has not only been found to be guilty of improper and dishonest detention of the principal's money, but has also been found to be guilty

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PROMISSORY NOTE.

pals. (*Leach, C.J. and Madhavan Nair, J.*) **MAHOMED SHAMSUDIN RAYUTHAK v. SHAW WALLACE & CO**

I.L.R. (1939) Mad 282=181 I.C. 153=

12 B M 414=49 L.W. 343=1939 M.W.N. 209=

A.I.R. 1939 Mad. 520=(1939) 1 M.L.J. 509

—Pakka adalia—Lej mandi transaction—Option as to buying or selling—Agent if bound to exercise option with instruction from constituent—Obligation

—If can be implied from course of dealings **See CONTRACT—PAKKA ADALIA.**

41 Bom L.R. 308,

—Possession by agent—If disposition by agent.

A man's possession by his agent is not disposition by his agent. **See ADVERSE POSSESSION—AGENT**

OK CO OWNER.

1939 A.C. 136=

A.T.D. 1000 P.C. 63 (P.C.),

by agent's

or collecting rent from the tenants, filed a suit against the agent for accounts of rent of certain years. As a result of the agent's negligence some of the rent had become time-barred.

Held, that the landlord was entitled to a decree for the rent which owing to the agent's negligence had not been recovered. (*Wort, Ag. C.J.*) **HARI OJHA v. RAMJATAN OJHA**

130 I.C. 61=5 B.R. 328=

11 R.P. 432 (2)=A.I.R. 1939 Pat 17.

—Rights and liabilities of agent—Duty to account

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(2) SURETY.

—Principal can prove that he signed as surety. **See EVIDENCE ACT, S. 92**

1939 A.M.L.J. 84.

PRIVY COUNCIL RULES R. 9—Extension of time for furnishing security—Power of High Court. See C.

P CODE, O. 45, R. 7. 1939 Rang L.R. 668 (F.B.).

PROCEDURE. See PRACTICE.

PROMISSORY NOTE

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Liability under Note inadmissible.

—Consideration—Recital in note of cash considera-

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of persons dealing with principal.

It is part of the business of a guarantee broker to find out the positions of those dealing with his principal.

PROMISSORY NOTE

Chand, J) HIRA LAL v MOHAMMAD YUSAF
41 PLE 49
—Insufficiency of stamp—Relief on original loan
Though a promissory note is not sufficient by stamp and hence inadmissible in evidence substituted on the original loan was of action the promissory note of the loan. A suit on the note one on the debt and relief be granted.
DEVIL NAURAT MAL

1939 A M L J 123

—Liability under—Executant signing as director of company

Where in the body of the promissory note the defendant promised to pay on behalf of himself and for and on behalf of a certain company but at the bottom he only signed his name on the stamps over which was impressed with a rubber stamp the words for and on behalf of the company and below the word Director.

Held that the intention of the defendant was to make himself personally liable (*Mukherjee and Latifur Rahman JJ*) PROBODH CHANDRA v JATINDRA MOHAN CHAKRAVARTY

—Liability under—Execution by Hindu family

Where a karta of a joint Hindu family pays money from time to time for purposes

cases allow an amendment of the plaint (*Dhawan and Rowland JJ*) THAKUR PRASAD v AJODHYA PRASAD

5 BR 394=180 IC 365=

11 BR 503(2)=1939 P W N 305=

20 Pat L T 321

—Liability under—Maker existing form—Burdens of proof

INSTRUMENTS ACT SS 20 AND 21

—Liability under—Undisclosed principal—Suit on original consideration

The law is well settled that the name of a person sought to be charged upon a negotiable instrument must appear clearly on the instrument itself. It is not open to a party to say either by way of claim or defence that the person whose name appears on the document as a party to the instrument was in reality acting for an undisclosed principal. The name of the principal must

PROVIDENT FUNDS ACT (1925), S 5

—S 3—Fund held by Railway—Equitable assignment by employer—Valuist
An employee of a Railway Company cannot create an equitable assignment.

—S 3—If to be a dependent

There is no provision to be found in the Provident Funds Act which says that only a dependent may be lawfully nominated. S 4 of the Act on the contrary clearly implies that a nomination may be made in favour of a person other than a dependent (*Burn and Stodart, JJ*)

—S 5—Applicability—Marwar

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S 5 applies only to Government and Railway Provident Fund and not to the Fund of a private company. Provident Fund monies standing to the credit of an employee of such a private company are the property of that employee and his heirs, who are part of the personal law of the employee.

(*Dutt, J C and Tyabji, J*) MT LATIFANBAI v SAKINABAI
11 BR (1939) Kar 432=181 IC 770=

11 BR 240=AIR 1939 Sind 107

—S 5—Scope—If detracts from Ss 180 and 181 Succession Act

S 5 of the Provident Funds Act does not in any way detract from the effect of Ss 180 and 181 of the Succession Act (*Wadsworth, J*) SONA BAI v CHELLAM
1939 M W N 280=AIR 1939 Mad 485

—S 5 (1)—Deceased nominating certain person

(*Sen, J*) ASHUTOSH MISRA v PROTIVABALA DEBI
43 CWN 399

—Note inadmissible—Defendant admitting liability—Decree if can be passed

A decree cannot be passed on the basis of a promissory note if it is not admitted by the defendant.

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PROVIDENT FUNDS ACT (XIX OF 1925) S 2

—Compulsory deposits—Exemption from attachment.

See C P CODE, S 60(1)(4) 1939 Rang L R 504

J) In the goods of STANLEY AUSTIN CARDIGAN
MAKIN AIR 1939 Cal 642

—S 5(2)—Provident Fund—Right of nominee—When accrues—Succession certificate—Court fee

The amount of the Provident Fund standing to the credit of a subscriber or depositor under the Provident Funds Act remains his property till his death and does not vest in and become the property of the nominee at the time of nomination. The nominee takes by succession after the death of the depositor and consequently is not entitled to get a succession certificate in respect of the amount without payment of the court fee payable under Art 12, Sch I of the Court Fees Act (*Tyabji,*

PROVIDENT FUNDS ACT (1925), S 8.

J.) MRS. DAISY KEMP. *In re*I.L.R. (1939) Kar 359 = 180 I.C. 642 =
11 R.S. 185 = A.I.R. 1939 Sind 52

—S. 8—Applicability and scope of—Mutual Benefit fund or co-operative credit societies.
S. 8 of the Provident Funds Act only appears to permit the extension of the application of the Act to funds established by an authority or institution for the

PROV. INSOLV. ACT (1920), S 9.

to final judgments, orders or decrees. The decision of the Insolvency Judge under S. 4 is subject to appeal under S. 75 and cannot thus be said to be final (*Bhide*, J.) KAKU SINGH v. SARE KRISHAN
183 I.C. 63 = 12 R.L. 93 = 41 P.L.R. 302 =
A.I.R. 1939 Lah 87.

—S. 6 (b)—Intention of debtor—Inference from

DAI V. CHELLAM.

1939 M.W.N. 400 =

A.I.R. 1939 Mad 485.

—S. 21 (e)—“Provident fund”—Meaning of.
“Provident fund” as defined by S. 2 (e) of the Pro-

area, which was available to the creditors for realizing their debts by temporary alienation, and if that transfer by itself is not enough to bring in sufficient money to discharge his existing liabilities the transfer must be

and 54. See PROVINCIAL INSOLVENCY ACT, S 75.

41 Bom L.R. 1258

—S. 4—Process of Insolvency Court—Execution sale of insolvent's property after admission of insolvency petition—Application by Official Receiver for order of refund of sale proceeds—Power of Court to make order of refund.

41 I.L.R. 100 = A.I.R. 1939 Lah 949.

—S. 6 (g)—Notice of suspension of payment—Service on creditor of notice of hearing of insolvency petition—If amounts to.

The mere service of notice by the Insolvency Court informing the creditors of the date on which the insolvency petition filed by the debtor is to be heard cannot bind the debtor to his creditors
(*Nezam Ali and Sen*,

tion was admitted, the Insolvency Court has full power to decide the application and to order a refund if it comes to the conclusion that the realisation of the sale proceeds by the execution creditor was unjustified. (*Abdur Rahman*, J.) SESHAYYA v. RANGIAH (OFFICIAL RECEIVER, NELLORE).

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—S. 5, L.I.P. 2241 = *Insolvent firm's family—Business—Debts by manager—Other members taking no part in conduct of business—Liability to be adjudicated insolvents in respect of business debts—Act of insolvency of manager—If act of other members as well.*

widest powers on an Insolvency Court and as such there can be no justification for holding that it cannot set aside a sale unless it is specifically alleged that it was benami on behalf of the insolvent. It cannot be said that an official receiver cannot challenge a sale or transfer unless it happens to fall

debts of the business who are in control or management of it, or who have acquiesced in the course of the business in which the particular contract was entered into so as to warrant their being treated as parties to the contract. Unless there is a personal liability in respect of a debt, there is

debtor and the debtor's estate on the one hand, and the claimants against him or it or persons claiming under them. The decision is not binding on a person who was not a claimant before the Insolvency Court. The fact that he appeared as a witness in the insolvency proceed-

never had any dealings express or implied and for an act which he had never committed or acquiesced in. (*Burn and Stodart, JJ.*) CHENANA GOWD v. OFFICIAL RECEIVER, BELLARY.
50 L.W. 857.

—S. 9 (1)—Creditor's right to present petition—

PROV. INSOLV. ACT (1920), S 9.

refer to the pre-entation of the petition, but it refers to the act of insolvency on which the petition is to be grounded. The ordinary construction of that clause would be that a person is not entitled to institute a petition for adjudicating a debtor insolvent unless he establishes *inter alia* that the act of insolvency took place within three months before the presentation of his petition. That clause does not prescribe any period of limitation within which the petitioning creditor is to present his application, and therefore S 5 of the Limitation Act does not apply to the petition.

—S. 9 (c)—Debtor disposing property by oral gift to defeat creditors—Act of insolvency—When occurs

donee and not when the debtor makes a report of the gift for mutation to the patwari (*Tek Chand J*)
SINGHA v CHIRANJI LAI. 182 IC 456=
12 R L 37=41 P L R 355=A I R 1939 Lah 35

—Ss 20 and 28 (2)—Hindu joint family—Insolvency of father—Attachment of son
—Sale of sons' shares by Official
rights of attaching creditor—Appu-
recessor prior to attachment—Effect

with the sons' shares. If the sons are not adjudicated

VENKATACHELAMAYYA. 1939 M W N 270=
49 L W. 422-A I R. 1939 Mad. 438

—Ss 27 and 43—Application for discharge—
Extension of time—Power of Court—Annulment if
automatic after lapse of time fixed.

an application for discharge having been made by the

PROV. INSOLV. ACT (1920), S. 28.

insolvent cannot automatically bring about the annulment of the order of adjudication. (*Niyogi, J*)
BISHAM CHAND v KISANLAL.

—S. 25—Ability to pay debts—Test—Possession of unliquidated assets.

More presence of unliquidated assets does not necessarily prove that they are capable of being liquidated. Unliquidated assets cannot be sufficient to discharge

provide sufficient money to discharge his debts, yet if he has no liquidated assets with which to pay his debts at

each particular case is whether he possesses such realizable assets, as can within a reasonable time be made available to meet all his liabilities. Where the assets realizable at the instance of the creditors are much less than the debts due to them, and there is no reasonable

nothing by liquidating
be held that the debtor is
in the meaning of S. 25.
//.) BHAGWAN DAS v.
L.R. (1939) Lah 408 =
= A.I.R. 1939 Lah 348.

—S 25—Creditor proving act of insolvency—
Debtor's ability to pay debt—Enquiry into—Duty of
Court.

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IAS v MD.
Lab 408=
Lab 349.

—S. 28—After acquired property—Insolvent permitted by Official Assignee or creditors to trade—Person advancing money to insolvent for carrying on business—His right to prior charge over that of receiver.

If the Official Assignee or creditors have permitted the defendant to trade, the correct claim upon the person with stock in hand is for the purpose of carrying on the business, and not for the purpose of taking and applying the assets to the satisfaction of the creditors. Their object in allowing him to trade must be taken to be with a view to the carrying on of the business.

PROV. INSOL. ACT (1920), S. 28.

to obtain some advantage out of the surplus profits which have been acquired when the trading is over and all necessary outgoings incident to the trading have been paid. The claim of a person who has supplied money

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—Ss. 28 and 44—Decree under O. 34, R. 6, C. P. Code—Judgment debtor—Insolvent—Right of decree-holder to execute his decree

What sub S. (2) of S. 28 of the Provincial Insolvency Act prevents is the execution proceedings or other proceedings by a creditor, and sub-S (6) provides that a secured creditor is exempt from that bar imposed by sub-S. (2). The words "otherwise deal with his security" do cover the application of the decree holder under O. 34, R. 6, C. P. Code, and a secured creditor is entitled by this sub-section to obtain a decree and to deal with the security by the method allowed by that rule. The debt due to a secured creditor is not a debt

receiver.

property of the family applied for execution of the decree by sale of three fourth share of the non-insolvents in the attached property. The receiver opposed the application but his objections were disallowed on the ground that the rights of the receiver could only be exercised subject to the rights of the attaching creditors. The execution was thereupon ordered to proceed. B, the second decree holder, who had also obtained money decrees against the insolvent and his co-sharers and had applied for execution of those decrees, claimed rateable distribution.

Held, that as the receiver had not exercised his powers the property which had been attached and sold must necessarily be di-

Y. D. 1939-63

PROV. INSOL. ACT (1920), S. 28

BALA DASSI.

184 I.O. 69=12 E.C. 200=
A.I.R. 1939 Cal 279.

—S. 28—Proceedings against insolvent—Adjudication of mortgagor during pendency of mortgage suit—Decree and sale after appointment of receiver—Receiver not impleaded—Receiver, if bound by sale.

Where during the pendency of a mortgage suit, the mortgagor was adjudicated an insolvent and a receiver was appointed and thereafter a decree was passed and the property was sold, it was held that the Receiver alone to whom the equity of redemption had been assigned by the operation of law, had the sole interest in the subject-matter of the suit, and as such any decree passed in proceedings to which he was not a party would be a nullity and he would not be bound by it (*Pollock, J.*) INDIAN COTTON CO., LTD. v. RAM CHARANLAL, 183 I.C. 97=12 R.N. 48=

1939 N.L.J. 202=A.I.R. 1939 Nag 128.

—S. 28—Scope of—Decree against Hindu father and son—Attachment of father's and son's interests in family properties—Subsequent insolvency of father—Effect—Son's interest—If sale, attachment of Official Receiver's interest.

son's interest, being prior to the father's insolvency, destroys the Official Receiver's right if any to acquire

must necessarily be dismissed. (*Braumont, C.J.*) J. HANGIR KUNSETJI v. KASTUR PANNALI.

I.L.R. (1939) Bom 493=41 Bom L.R. 583=
A.I.R. 1939 Bom 344.

—S. 28 (2)—Scope—Insolvency of Hindu father—Son's shares—Attachment by creditor—Subsequent sale of son's shares by Official Receiver—Validity as against attaching creditor. See PROVINCIAL INSOLVENCY ACT SS 20 AND 23 (2). 1939 M.W.N. 270.

—S. 28 (2)—Scope—Insolvency of Hindu father—Son's share—Proceedings to attach or sell—Leave of Insolvency Court—If necessary—Attachment or sale of son's shares by creditors—Power of Official Receiver to

PROV INSOL ACT (1920) S 28

that proceedings cannot be taken in respect of the property interests in the family property
 Insolvent Court The right to only exists so long as the sons property exist If the interests of the sons have been sold or if there has been a lawful attachment, there exists no property over which the power can be exercised by the Official Receiver (*Leach, C J and Somaya, J*) ARUNACHALAM CHETTIAR v SABA RATNAM CHETTIAR I L R (1939) Mad 585= 1939 M W N 367=49 L W 516= A I R 1939 Mad 572=(1939) 1 M L J 889

—S 28 (2)—Vesting in Receiver—Ownership of property

Where a person is adjudged insolvent and his property becomes vested in the Official Receiver under S 28, legally the receiver and not the insolvent is the owner of the property (*Baile, J*) RAM RATTAN v FAZAL HAQ 41 P L E 816=A I R 1939 Lah 216

—Ss 28 (2) and 2 (d)—What properties Official Receiver

S 28 (2) read with S 2 (d) of the Provincial Insolvency Act makes it clear that all the property of an insolvent whether within or without British India vests in the Official Receiver (*D R Norman*) OFFICIAL RECEIVER, AJMER v ALLA RAKHA YUSUF 1939 A M L J 73

—S 28 (4)—Pension payable to employee of Imperial Bank—If vests in Receiver—Imperial Bank of India Act, S 31 (2) (1)—Rules framed under

If an employee of the Imperial Bank of India who is entitled to a pension under the Pension Fund Rules and Regulations framed under S, 31 (2) (1) of the Imperial Bank of India Act is adjudicated insolvent after his retirement his pension as soon as it becomes payable at

moneys so coming to hand (*Dorabhai C J and Naum Ali, J*) IMPERIAL BANK SOCIETY LTD v SANTOSH KUMAR P 41

—S 28 (6)—Secured creditor—An insolvent to secured creditor, after Validity

Though an order of adjudication does not affect the rights of the secured creditor over the property secured yet a sale by the insolvent to a secured creditor of the

—Ss 29 and 37—Attachment of debtor's property

—S 30—Non publication in the gazette—If affects validity of adjudication and subsequent proceedings
 Neither the validity of the order of adjudication nor the validity of the proceedings subsequent thereto is affected by non publication of the notice of the order of

PROV INSOL ACT (1920), S 37

intended proceed been duly

11 B N 508=1939 N L J 96= A I R 1939 Nag 103

—Ss 34 and 28 (7)—Effect of
 The effect of the Provincial Insolvency Act is that the insolvent as from the date of the petition is civilly dead and cannot alter the petition enter into any transaction in respect of his property which will bind the Official Receiver or his creditors Any person dealing with the insolvent after that date does so at his peril The clear enactment that an order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition

OFFICIAL RECEIVER 184 I C 330=12 B L 206= A I R 1939 Lah 384 (F B)

—Ss 35 and 37—Order of annulment—Caution to be observed

Orders of annulment should be very carefully worded because where the Court annuls insolvency proceedings, to avoid very considerable hardship to the creditors, it is necessary to make provision for what is to happen to the assets Further a Court should be very chary about annulling insolvency proceedings where there are proceedings pending under ss 53 and 54 of the Insolvency Act (*Stone, C J and Bose J*) RAMDAVAL BHAGIRATH PERSHAD v KANHAIYALAL RAMKISHAN 1939 N L J 465

—Scope—Bogus character of petitioning
 Application to set aside adjudication on grounds of fraud—Burden of proof

An order of adjudication cannot be annulled on an

caution v merely petition the Col
 S 35 on the ground that the order ought not to have been made (*Aunhi Raman J*) CHINA JOGAVIA v SATYANARAYANA 50 L W 821= 1939 M W N 1203=(1939) 2 M L J 753.

—S 35—Scope—Ex parte order of adjudication passed on last Saturday being clearance day—Propriety of—Liability to be set aside

Under S 35 of the Provincial Insolvency Act, the appellate Court is competent to consider the propriety of an ex parte order of adjudication An ex parte order of adjudication made on the last Saturday which is a proper day and is therefore liable to be set aside is presumed to be valid Judicial work is presumed to be done on a clearance day (*Ramchand and Dayal Babu Lal v IAKHU*) Pat L T 768=1939 P W N 699.

—S 35—Scope—Ex parte order of adjudication—Interpretation of order—Absence of an appointee and vesting—

PROV INSOL ACT (1920) S 37.

be distributed amongst the scheduled creditors' and there was neither a vesting order nor the appointment of an appointee, the order only means that the Court is annulling an insolvency, but is providing that there shall be no reverter of the property vested in the Receiver under the receiving order to the debtors, but that the property is to be sold and the proceeds distributed amongst the creditors. If there was balance it would go to the insolvents (*Stone, C.F. and Clarke, J.*)

MEGHAIJI v. D BHAKI 183 IC 316 =
12 RN 51 = 1939 N L J 180 =
AIR 1939 Nag 203

—Ss. 37 and 43—Annulment of adjudication—Power of receiver to sell insolvent's property See PROVINCIAL INSOLVENCY ACT, SS 43 AND 37.

ILR (1939) Lah 275.
—Ss 37 and 43—Sale by Official Receiver of insolvent's property approved by Court—Annulment of adjudication prior to actual execution of sale deed—Sale, if valid—Annulment if could be used in favour of insolvent

acts left incomplete on the date of the annulment and

AIR 1939 Oudh 65
—S. 41—Absolute refusal to grant discharge—If justified.

An absolute refusal to grant an order of discharge is not justified by S 41 of the Provincial Insolvency Act, (*Zia ul Hasan and Hamilton, JJ.*) BADRI NATH v. RAM CHANDRA. 14 Luck 442 = 179 IC 1001 =
11 R O. 219 = 1939 O A 231 = 1939 O L R 110 =
1939 O W N 193 = AIR 1939 Oudh 129.

—S 41—Conditional discharge—Order that future earnings should be deposited in Court—Propriety.

In the absence of evidence to show that since his insolvency the insolvent has, or income or has acquired or is likely to acquire property a conditional discharge deposit all his subsequent earnings in Court is not good. The whole of a man's earnings and after acquired property in which ought not to be made a very motive which moves a man to attempt to obtain income or to acquire property; it has the effect that he

71 =
58
—Ss 41 and 42—Order suspending discharge until debts are fully paid—Legality

An order suspending an insolvent's discharge until such time as his scheduled debts are fully paid, is illegal. The Court must grant an absolute order of discharge, if the insolvent pays 8 annas in the rupee and is not guilty of the misconduct specified in S. 42 of the Provincial Insolvency Act. (*Stemp, J.*) FLEMING v. OFFICIAL

PROV. INSOL. ACT (1920), S. 41

RECEIVER, FEROZPORE DT

ILR (1939) Lah 429 = 41 P L R 78 =
AIR, 1939 Lah. 183.

—S 41—Second application for discharge—Competency—Right to absolute discharge.

When an insolvent applies for discharge within the period specified in the order of adjudication and his application is refused, he is not precluded from making a further application for discharge and so remain undischarged for life. A person was adjudged insolvent on 27—11—1927 and was allowed one year's time in which to apply for discharge. In 1928 he applied for extension of time. An inquiry was ordered to be held in the matter which disclosed that during a period of nearly eight years of insolvency, the creditors had succeeded in recovering only five pias in the rupee. On 4—1—1936, he was granted a discharge on condition of his paying Rs 1,000 to the creditors within two years. This the insolvent failed to do. On 26—4—1938, he applied for an absolute order of discharge.

Held that whatever be the facts, the insolvent ought

An order of discharge is not invalidated in conse-

1939 N L J, 96 = AIR 1939 Nag 103.

—S 41 (2) (c)—Construction—Order of discharge—Condition that creditors may recover due if in time, until they become irrecoverable—Validity of.

S 41 (2) (c) of the Provincial Insolvency Act does not justify the Insolvency Court in passing an order discharging the insolvent but at the same time leaving him liable to debts incurred before insolvency. That would defeat the object of the adjudication in insolvency which is to free the debtor from the claims of his existing creditors, which are to be satisfied out of the property of the debtor which the Court takes possession of and distrib-

—Ss 41 (2) (c) and 42 (1)—Discharge—Suspension of order for 18 months—Effect of—Matters to be looked into before an absolute order for discharge is made.

The only conditions that can be imposed under S. 41 (2) (c) of the Provincial Insolvency Act are conditions with respect to any earnings or income which may afterwards become due to the insolvent or with respect to his after-acquired property. It is not possible to impose a condition that the insolvent shall pay any specified proportion of his debts. Where an insolvent's debts exceeded Rs 18 000 and his total assets realised were a little above Rs 50 the Court was obliged under S. 42 (1) to refuse an absolute order of discharge, unless the insolvent satisfied the Court that the fact that the

PROV INSOL ACT (1920), S 42

were not of a value equal to 8 annas in the rupee on the amount of his unsecured liabilities had arisen from circumstances for which he could not justly be held responsible. The operation of an order of discharge can only be suspended after the order has come into existence (*Burn and Stodart J J*) SEETHARAMAPPA v RAMAPPA 1939 M W N 975 = 50 L W 632 = A I R 1939 Mad 890 = (1939) 2 M L J 555

—S 42—Application for discharge by insolvent

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An Insolvency Court has no jurisdiction to impose a penalty on the insolvent in the shape of suspension from practice. The suspension is the result of the Rules framed by the High Court and the scope of the Rules cannot be extended either by the agreement of the parties or by the order of the Insolvency Court. On the basis of a statement by the insolvent that he was prepared to deposit with the Official Receiver Rs 20 per mensem till his creditors got 8 annas in a rupee and that in default of any payment he should be disallowed to practise as an advocate which was agreed to by the creditors and the Official Receiver, the Court passed an order of conditional discharge for six years subject to the condition that the insolvent should deposit Rs 20 every month and also ordered that in default of payment, he should be liable to suspension from practice as provided by the Rules of the High Court. According to the insolvent his proved debts amounted to Rs 181 8 0

Held that the order was not in accordance with law and was one which was not fair to the parties. The Court was dealing not with an application under S 38 but with the insolvent's application for discharge and for that purpose the Court was bound to consider the

PROV INSOL ACT (1920), S. 44

In view of the wide powers conferred upon the Court by S 42 the Court has power generally to review any questionable transactions covered by that section which are in any way relevant to the insolvency even if such transactions could not be expressly avoided under Ss 53 and 54 of the Act (*Edgley J*) ABDUL SATTAR v DINAJPUR TRADING AND BANKING CO LTD A I R 1939 Cal 490

—S 42(1)(i)—Transfers prior to insolvency—

Courts to examine the or after insolvency the insolvent prior to of S 42(1)(i), but regarding the alleged

fraudulent transfers upon which the order of discharge can be refused and the Judge should not take into consideration conduct which could not have had anything to do with the bankruptcy either in producing it or affecting it in any way after its commencement. Where however the transfers effected by the insolvent have considerable effect upon the insolvency, then an order refusing discharge can be based on such transfers although they might have been effected long before the application for insolvency (*Edgley J*) ABDUL SATTAR v DINAJPUR TRADING AND BANKING CO, LTD A I R 1939 Cal 490

—S 43—Annulment if automatic after lapse of time fixed. See PROVINCIAL INSOLVENCY ACT, SS 27 AND 43—APPLICATION FOR DISCHARGE

1939 N L J 96

—S 43—Annulment—If can be used in favour of insolvent. See PROVINCIAL INSOLVENCY ACT, SS 37 AND 43—SALE BY OFFICIAL RECEIVER

1939 A W R (C O) 17 = 1939 O W N 32

—Ss 43 and 37—Annulment of adjudication—Power of Receiver to sell insolvent's property

After the annulment of adjudication under S 43 of the Act

Provincial Insolvency Act is generally understood to mean the amount actually in existence available for division among the creditors and it does not include future assets (*Sk mp J*) FLEMING v OFFICIAL RECEIVER, FEROZEPUR DT

1939 P T R 78 =

RAM v SAWANA RAM 184 I C 472 = 12 E L 229 (2) = A I R 1939 Lah. 300

—Ss 44(2) and 28—Effect of order of discharge—Creditors' remedy

Under S 44(2) of the Provincial Insolvency Act, the

him, the onus of proving fraud in respect of those transactions is on the creditors (*Edgley J*) ABDUL SATTAR v DINAJPUR TRADING AND BANKING CO LTD A I R 1939 Cal 490

—S 42(1)(i)—Transactions not avoidable under Ss 53 and 54—Power of Court to review

of discharge does not terminate the proceedings, the creditors are precluded by S 28(2) from enforcing their remedy in any other Court or in any other manner except in the Insolvency Court and in the manner provided by that Act (*Niyogi, J*) BHSAM CHAND v KISAN LAL A I R (1939) Nag 478 = 182 I C 214 =

PROV. INSOL. ACT (1920) S. 51.

11 B.N. 508 = 1939 N.L.J. 96 =
A.I.R. 1939 Nag 103

—S. 51—Scope—Attaching decree holder—Sale in execution after admission of insolvency petition—Right to retain costs out of moneys realised by execution sale—Other decree holders—Position of.

Where moneys are realised in the course of an execution sale of the insolvent's property after the date of the admission of a petition for insolvency, even an attaching decree holder is not entitled to retain the costs out of the moneys realised by him in such execution and derive the benefit of the execution as against the Official Receiver. No distinction can be made between an attaching creditor and other decree-holders so far as S. 51 of the Provincial Insolvency Act is concerned.

(Abdur Rahman, J.)
RECEIVER, NELLO

183 I.C. 441 =

49 L.W. 771.

—S. 51(3)—Applicability—Mortgage suit—Final decree and order for sale—Subsequent insolvency of mortgagor—Sale in execution—Official Receiver not brought on record—Bona fide purchaser—If protected—Title of execution purchaser as against receiver and vendor from him.

S. 51(3) of the Provincial Insolvency Act does not apply to a purchase in execution after adjudication which vests the property in the Official Receiver. Where subsequent to the final decree and order for sale in a mortgage suit the mortgagor is adjudicated insolvent but owing to ignorance of the insolvency the Receiver is not brought on the record in execution the property is purchased at the execution sale bona fide purchaser, the purchaser does not get title to the property as against the Official Receiver purchaser from the latter subsequent to the sale in execution. It makes no difference that the decree is a mortgage decree and not a money decree. The fact that the execution purchaser buys the property in good faith and without knowledge of the insolvency cannot protect his purchase under S. 51(3) as this provision has reference to a stage prior (Wadsworth, J.) ANNAMALAI MANAN CHETTIAR.

1939 M.W.N. 445 = A.I.

—S. 52—Costs of execution—Charge—Some only of properties sold by Receiver—Creditor's right to entire costs

Under S. 52 of the Provincial Insolvency Act, a creditor is entitled to the costs of the execution, and he has said amount on the property released to the receiver. If the portion of such property or only items of such property, the whole of the sale proceeds of

—S. 52—Judgment debtor adjudged insolvent after sale and before its confirmation—Sale confirmed before receipt of order staying its confirmation—Decree-holder's

PROV. INSOL. ACT (1920), S. 53.

(Bhude, J.) JAGANNATH AGGARWAL v SPECIAL OFFICIAL RECEIVER. 41 P.L.R. 706

—Ss 53 and 54—Applicability—Fraudulent transfer or preference—Mortgage to creditor executed under threat of legal proceedings—If voidable as fraudulent preference.

Where the debtor executes a mortgage in favour of a creditor as a result of pressure which the mortgagee who is a bona fide creditor of the insolvent brings to bear upon him, there is no case of fraudulent preference. So long as there is a threat of legal proceedings to avoid which the debtor makes the alienation and so long as his dominant motive is not to fraudulently prefer a particular creditor the validity of the alienation cannot be challenged under Ss 53 and 54 of the Provincial Insolvency Act.

existence of the debt is
) KRISHNAN CHET-
50 L.W. 771.

ence of—Last remain-

ing property available by insolvent

For a man practically in a state of insolvency to alienate his last remaining property and that only an expectancy to a relative for a sum only part of which was paid would indicate that there was bad faith and the transaction must be set aside under S. 53 of the Provincial Insolvency Act. (Skemp, J.) OFFICIAL RECEIVER, SARGODHA v. SULTAN. 184 I.C. 463 = 12 R.L. 224 = 41 P.L.R. 190 = A.I.R. 1939 Lah 322

—S. 53—Burden of proof.

Under S. 53 of the Provincial Insolvency Act, the

—S. 53—Decision setting aside transfer—Res judicata—Unproved consideration for transfer—If can be proved as unsecured debt.

A decision of an Insolvency Court, setting aside insol-

—S. 53—Fraudulent transfer—Cash consideration advanced—If can be proved as debt.

Cash items of consideration in transfers set aside by the court at the time of execution allowed to be proved for the purpose of (J.) MAI CHAND v. I.A.R. 1939 Lah 145.

—Ss. 53 and 54—Fraudulent transfer—Prefer-

debtor in making the transfer intended to defeat the claims, and the transferee had knowledge of such intention, if the only purpose of the latter is to secure

PROV INSOL ACT (1920), S 75.

L 636=
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an Insolvent
ACT, SS 4 53 AND 54 1939 A W R (H C) 316.

—S 53—Scope—Objection to transfer under S 64,
C. P. Code—Maintainability

It is doubtful whether an objection to a transfer based upon S 64 C. P. Code, is properly within the scope of an application for a writ.

—W. 50 and 41—Scope—Additional Receiver for special purpose—Power of Co. 111 111

delegated to him under S 80 (d), Provincial Insolvency Act) the receiver has to decide whether the alleged debt was actually due and if so, whether the whole or a part of it was unsecured. When after an inquiry into these

conceived, or the order passed by him *ultra vires*.
The appeal against the receiver's order lies to the
strict Judge under S 68 at the instance of the credi-
tor who is an aggrieved person. (*Tek Chand, J*) RAM
RAITAN v LALA DINA NATH

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ver (*Tek Chand, J*) KUNDA SINGH v OFFICIAL
RECEIVER AIB 1939 Lah 499

AIR 1939 Mad 374 (1939) 1 M L I 88

—S 59—Suit by insolvent
belongs to him, having been
father—Power of Official Receiver
PUNJAB CUSTOM (POWER TO C

—S 60 (2)—Scope—Sale of
—Insolvent becoming member of
adjudication—Effect—Punjab Alienation of L.
S 16

S 60(2) is intended to supplement S 2 protect the interest of the insolvent by saving the operation of enactments prohibiting the execution of or orders against the immovable property of a debtor even after the property has vested in the receiver and must therefore be held to apply to a sale of insolvent's property by the receiver. Such a sale being made in enforcement of an order of adjudication S 16 Punjab Alienation of Land Act, which applies to execution of decrees or orders of Court against land belonging to a member of a notified agricultural tribe applies by the receiver of the land belonging to an insolvent who is a member of such tribe. In considering the application of S 16 to such a sale, the status of the insolvent at the time of the sale of the property has to be taken into consideration because there is no reason

——Ss 75 and 70—*Appeal—Limitation—Starting point—Complaint to Magistrate*

A Court has to record a finding and make a complaint under S 70 of the Provincial Insolvency Act. It is only against the combined effect of the order that the person concerned has a right to appeal. *See* *Chandrasekhar v. State of Madras*.

—S 75—Construction and scope—Order of District Judge in appeal from order of Subordinate Judge
 122 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046 1047 1048 1049 1050 1051 1052 1053 1054 1055 1056 1057 1058 1059 1060 1061 1062 1063 1064 1065 1066 1067 1068 1069 1070 1071 1072 1073 1074 1075 1076 1077 1078 1079 1080 1081 1082 1083 1084 1085 1086 1087 1088 1089 1090 1091 1092 1093 1094 1095 1096 1097 1098 1099 1100 1101 1102 1103 1104 1105 1106 1107 1108 1109 1110 1111

strict Judge on appeal from
ordinate Judge under S 53
insolvency Act are final and
appeal to the High Court
75 of the Act, which deals
District Court on appeal from
of the Act
in such
ders made
to cover
CHIEKAR
R. 1258

not prohibit temporary alienation of land Hence it is

with decisions of the District Court on appeal from the Act of 1931, which decisions are in such favor of the Act that the Government is not bound to cover the same. **CHEKAR**
B. 1258

S 66(2) of the Provincial Insolvency Act does not

—S 75—Order of District Judge—Second appeal.
75 the order of the District Judge on appeal
o second appeal is therefore competent
KIRPA RAM SAWANA RAM
184 IC 472—12 RL 229 (2)—
AIR 1939 Lah 300.

PROV. INSOL. ACT (1920), S 75

—S. 75—Order passed in first instance by receiver—Revision.

Where the order was passed in the first instance by the Receiver and not by a Court subordinate to the District Judge, revision under S. 75, Provincial Insolvency Act, does not lie. The revision however may be treated as having been made under S 115, C P. Code, read with S. 5, Insolvency Act. (*Tek Chand, J*) RAM RATTAN v. LALA DINA NATH. 41 P.L.R. 884=

A.I.R. 1939 Lah 460

—S 75—Revision—Finding of fact—Finding as to absence of fraudulent intention.

A finding of the District Judge that there was no fraudulent intention in respect of a deed of transfer, is a finding of fact, and is not, therefore, open to revision. (*Skemp, J.*) KUNDAN LAL v. MANSA RAM KALSI. 41 P.L.R. 655.

—S 75—Second appeal—Competency.

It is doubtful whether second insolvency cases where no question of Provincial Insolvency Act, has been decided. (*J.*) RAM RATTAN v. FAZAL I.

—S. 75—Subordinate Court of First or Second Class invested with insolvency jurisdiction—If subordinate to District Court.

A Subordinate Court whether of the First Class is a Subordinate Court to a District Court the meaning of S. 3 in relation to the investiture powers by the Local Government; and so though exercises concurrent jurisdiction with the District Court does not cease to be subordinate for the purposes of appeal under S. 75 which the High Court has no jurisdiction to entertain. (*Davis, J.C. and Weston, J.*) MUJOMMAL v. LAL SINGH. I.L.R. (1939) Kar. 527= 183 I.C. 757=12 R.S. 80=A.I.R. 1939 Sind 221.

—S 75 (2) and (3)—Appeal—"Aggrieved" meaning of—Person likely to be affected—Right of appeal—Absence of leave of Insolvency Court—Effect.

One B had G and K as partners in a certain contract. G and K filed separate suits at different places for settlement of partnership accounts against B and obtained decrees. Pending these suits B was adjudicated insolvent and an unsecured creditor applied to the Court under S. 4 for determination of which had been recovered from B paid solely to K or not. To this B was a party. The trial Court held in favour of B. This order an appeal was filed in the District Court. In that appeal B was not made a party but that he should be made a party was against this order G appealed under S. 75.

Held, that, even if C (2) to S. 75, applied, the appeal was premature as it was possible that the Court might dismiss the appeal, and decide in favour of G and if it did not, then B would become an aggrieved party. With regard to the application of S. 75, even if it was applicable no leave of the District Court was required. The finding of the District Court was not a finding of fact.

—S 75 (2)—Order refusing discharge—Appeal—Failure to substitute heirs of deceased creditor—Com-

time of the hearing of the application for discharge. Where during the course of discharge proceedings started by the insolvent, a creditor who is party to such proceed-

PROV. S. C. C. ACT (1887), S. 25.

ings dies, the criterion which should be adopted for deciding whether the heirs of such creditor should be substituted is to ascertain whether or not the interest of such heirs would be adversely affected by their non substitution. Where a creditor only proved his debt but did not take part in the insolvency proceedings nor did he put in an appearance in course of proceedings in connexion with the application for insolvent's discharge, and the order of discharge having been refused the insolvent filed an appeal during the pendency of which the creditor died and his heirs were not brought on record.

Held, that the non substitution of the heirs did not adversely affect their interests and hence failure to substitute them in appeal did not render the appeal incompetent. (*Edgley, J.*) ABUL SATTAR v. DINAJPUR TRADING AND BANKING CO., LTD.

A.I.R. 1939 Cal 490.

—S 75 (3)—Refusal to grant leave to appeal—MERS PATENT (MAURAS), N 202=1939 M.W.N. 734. CAUSE COURTS ACT—Difference between old and

while the old Act gave to the Small Cause Court jurisdiction only in certain specified matters, the present Act proceeds upon another basis, excluding from the

—S 17—Furnishing of security—Purpose.

Under S. 17 of the Provincial Small Cause Courts Act, the purpose for which security has to be furnished is to ensure the performance of the *ex parte* decree in case that decree is not set aside. It is not the intention of the Legislature that the security to be furnished is for the performance of the ultimate decree that might be passed in the event of the *ex parte* decree being set aside. (*Edgley, J.*) PULIN CHANDRA CHATTOPADHAYA v. KHETRA MOHAN GHOSE. 70 C.L.J. 4=

A.I.R. 1939 Cal 748.

—S. 17—(as amended by Act IX of 1935)—compliance with—Text of S. 17 of Provincial Courts Act as amended in 1935, is amended upon an applicant's application for a decree to have effect to the

the section a too narrow interpretation. Provided the application is made and the security is furnished within

the plaintiff, the defendant denies the title of the plaintiff but does not deny the execution of the deed, S. 23 does not apply. (*His Lordship.*) GHU RAM v. PESH 63= 39 Pesh. 14.

—S 25—Finding of fact—Finality—Limits

In a revision application against a Small Cause Court decision, the findings of fact are to be accepted, unless

PROV S C C ACT (1887), S 25

PROV C C ACT (1887), Sch II, Art 41.

they are perverse or unreasonable and it has also to be

the Bombay Amendment Act of goes to the root of the case merely incidental or concerned 'substantial issue' means an

Cause Court to decide plea of want of jurisdiction

If a Small Cause Court fails to decide a plea of want of local jurisdiction raised before it, and it does not appear from the record that the plea was abandoned at any stage its decree is liable to be set aside in revision (*Bhude J*) KISHAN CHAND JAISHI RAM v HAJI MAHOMED SADIQ & SONS 41 P L R 543

—S 25—Powers under—Exercise of—Consideration

In an application under S 25 of the Provincial Small Cause Courts Act no High Court can be appealed to or can possibly undertake the duty of appeal from decision of a Judge of Small Cause Courts. While the High Court has the power to interfere even upon a point of fact it behaves it to exercise the power simply and solely for the purpose of preventing miscarriage of justice or gross illegalities. The powers conferred by the section are purely discretionary. The

1939 O A 252—1939 O L R 112—
1939 O W N 203—A I R 1939 Oudh 141

—S 25—Power under—Interference—When called for—Practice (Nagpur High Court)

—S 27—Small cause tried on regular side—Appeal

Where a small cause has been tried by a Judge who exercises Small Cause Court's powers on the regular side, no appeal lies against his decree (*Almond J*) NATH CHAND 181 I C 2

—Ss 27 and 16—Suit of or before Munsif with no small cause side—Power of successor with such powers—A

Where a suit of a small cause Court of a Munsif whose predecessor had no Small Cause Court power and successor having such powers up to suit, the decree is not appealable actually tried in the ordinary way SATYENDRA NATH v NARENDRA

43 C W N 947

—If excluded

There is nothing in Sch II which excludes from the jurisdiction of the Court of Small Causes a suit by a Municipality to recover municipal taxes due to them (*Dass J C and Mehta J*) LARKANA MUNICIPALITY v GOKALDAS 11 R (1939) Kar 134—179 I C 927—11 R S 165—A I R 1939 Sind 35

—as amended by Bombay Act VI of 1930), Sch II Art 4—Substantial issue—Meaning of A "substantial issue" within the meaning of Sch II Art 4 of the Provincial Small Cause Courts Act, as

—Art 8—'House'—If includes shop

A shop is a house within the meaning of Art 8. Hence a suit for rent of a shop is triable as a small cause (*Almond J C and Mir Ahmad, J*) NATHU RAM v UTTAM CHAND 181 I C 241—

11 R Pesh 68—A I R 1939 Pesh 14 ed in suit excepted Small Cause Court—See C P CODE, (1939) 1 Cal 233

—Sch II Art 11—Power to create charge on immovable property—Decree—Construction

By Sch II, Art 11 appended to the Provincial Small Cause Courts Act the Small Cause Court is precluded from enforcing a charge and it has no power under S 7, C P Code, to attach property or to issue injunctions or to appoint a receiver of immovable property. So it could not have been contemplated to confer power on that Court to pass a decree charging immovable property. Where a decree directs that a defendant shall not alienate certain property till the satisfaction of the particular charge has to be understood as creating a charge on property. As that Court has no power to enforce a charge the decree so far as it seeks to create a charge must be regarded as void and inoperative (*Vijaya J*) GANGA PRASAD v RATAN 182 I C 102—11 R N 506—1939 N L J 121—A I R 1939 Nag 118

—Sch II, Art 34—'Suit on policy of insurance'

—Meaning of A suit on a policy of insurance means a suit arising

held, that the suit was on a policy of insurance and the same was not cognizable by a Court of Small Cause (*Shankar J*) PUNJAB MUTUAL LIFE INSURANCE CO v GOPAL SINGH BHATIA 183 I C 843—12 R L 144—41 P L R 551—A I R 1939 Lab 220

—Sch II, Art 41—Applicability—Suit for contribution by one against the other sharers in a decree—Costs paid by that person in respect of claim proceedings

Where one of the several sharers in a decree had to pay the whole cost in respect of the claim proceedings in the execution of the decree and he sues his other co-sharers for contribution in a Court of Small Causes Art 41 of Sch II to the Provincial Small Cause Courts Act applies to such a suit and as such it could not be entertained in that Court. In such a case the position

PROV. S. O. C. ACT (1887), Sch. II, Art. 41.

of the parties as
cannot be divorce
which resulted in
NATH v. SURAJMA

1938 N.L.J. 457 = A.L.R. 1939 Nag. 64.

Sch. II, Art. 41—Co-sharer tenant setting aside
rent sale by deposit under S. 174, B. T. Act—Suit by
him against other co-sharers for their proportionate
share—If one for contribution.

A suit by a co-sharer tenant, who has set aside a rent
sale by making a deposit under S. 174 of the B. T. Act,
for recovery from the other co-sharer tenants sums of
money proportionate to their shares, is not a suit for re-
imbursement but one for contribution falling under Art.
41, Sch. II of the Provincial Small Cause Courts Act
(Mitter, J.) RANJAN KUMAR v. BASANTA KUMAR.

43 C.W.N. 99.

Sch. II, Art. 41—Suit for contribution—Co-
sharer paying dues under certificate for period prior to
his becoming co-sharer—Suit by him against others for
their share—Jurisdiction of Small Cause Court.

The plaintiffs who were co-sharers with defendants in
a rent sale under the B. T. Act, set aside the sale and

Held, that in paying the amount due from the defen-
dants under the certificates, the plaintiffs were merely
paying a liability common to themselves and the defen-
dants and that their suit was, therefore, one for contri-
bution and not for reimbursement and as such was ex-
empted from the jurisdiction of a Small Cause Court
under Art. 41, Sch. II of the Provincial Small Cause
Courts Act (Edgley J.) ISHAN CHANDRA

PUBLIC GAMBLING

amended by C.P. Act 1928 of 1928, No. 11 of 1928

ing or betting and 'common gaming house' includes in
the case of gaming on the occurrence of rain or other
natural event any enclosure, space, etc., in which such
gaming takes place. Betting on the number of carts
that would enter the cotton market on a particular day
cannot possibly come under Cl. (1) (d). The word
'natural' seems to have been deliberately used in juxta-
position to the word 'rain' in order to make it clear that
a reference is intended to an event dependent on natural
and not on human causes. S. 13 of the Act also cannot
apply, for it provides only for the arrest of any person
found playing for money or on
cards, dice, counters or other
used in playing any game
skill (Pollock, J.) EMPERO

S. 3—Satta gambling—facts incumbent on the
prosecution to be proved.

In the case of an offence under S. 3 of the Public
Gambling Act, for keeping a shop as a gaming house
for satta gambling, it is incumbent on the prosecution
under the law to prove by definite evidence the commo-
dity in respect of which the alleged satta gambling was
going on. Mere vague and general statement by prose-
cution witnesses
nothing in law.
PEROR

PUNJAB ACTS.

or number renders a warrant ineffective. The
prosecution is not entitled to the protection of
S. 6 of the Gambling Act, the burden is on the
prosecution. (Niyogi, J.) DINESH CHANDRA
HAD

S. 6—No credible information—Magistrate—Warrant—Legality—S. 6, if can be raised when warrant is issued.

Where there was no credible information, a
quarry was made for the purpose of obtaining
a house was used as a common gaming house,
warrant is issued by the Magistrate under S. 6 of the
Act and hence S. 6 of the Public Gambling Act
not be invoked to raise a defence. (Niyogi, J.)
accused in such a case (Niyogi, J.) PRALHAD.

S. 8—Instruments of gaming—In the house.
Under S. 8 of the Public Gambling Act, the

HAD S. 10—Search under one of the gamblers—Where the warrant was issued by the Magistrate, the gamblers arrested at the time of the search.

Where the warrant was issued by the Magistrate, the gamblers arrested at the time of the search.

Money used in gaming—Such money is seized by the police under the Public Gambling Act and is deposited in the Public Treasury. (Niyogi, J.) EMPERO v. BUDYAL

PUBLIC POLICE—Civil and Criminal Courts—Decree of Civil Court—of criminal acts and offences—If can be proved.

of a public utility—period not exceeding 14 days—ports to, or within 14 days—period is valid—(Lord Russell of Kilmuir, J.) POWER CO. LTD.

Lab 578.

Certificate

there was adoption and Ram

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PUNJAB ACTS

Courts Act (VI of 1918)
 Court of Wards Act (II of 1903)
 Custom (Power to Contest) Act (II of 1920)
 Debtors' Protection Act (II of 1936)
 Excise Act (I of 1914)
 Land Revenue Act (XVII of 1887)
 Laws Act (V of 1872)
 Minor Canals Act
 Municipal Act (III of 1911)
 Pre-emption Act (I of 1913)
 Regulation of Accounts Act (I of 1930)
 Relief of Indebtedness Act (VII of 1934)
 Sikh Gurudwaras Act (VIII of 1925)
 Small Towns Act (II of 1922)
 Subordinate Service Punishment and Appeal Rules (1930)

Tenancy Act (XXVI of 1887)
 Village Panchayat Act (III of 1922)

PUNJAB ALIENATION OF LAND ACT (XIII OF 1900), S 3—*Benami in favour of an agriculturist—Rights of ostensible owner—Challenge by vendor or his*

Although a sale by an agriculturist in favour of an agriculturist is *benami* and is really for the benefit of a non agriculturist who furnished the consideration, the law would only recognise the sale in favour of the ostensible owner, who is entitled to hold the property, and not the *benamidar* who under the Act could not get it by sale. The ostensible owner is entitled at all times to hold the property against the *benamidar* and can raise the defence against such *benamidar* that the transaction being one intended to defeat the Act was against public policy and so void. Neither the vendor nor his reversioners have any *locus standi* to challenge it. (*Ram Lal, J*) *MAM RAJ v MAQSUDAN LAL*

41 P L R 701

—Ss 3 and 19—*Sanction by Deputy Commissioner—Revision—Powers of Financial Commissioner*

An order of the Deputy Commissioner granting sanction to a sale under S 3 of the Punjab Land Alienation Act is not final and can be revoked by the Financial Commissioner in revision under S 19 of that Act.

Right of alien to retain possession

Even if an alien has no valid title to the land as owner owing to the fact that the alienation in his favour has not received the sanction of the Deputy Commissioner under S 3 (2) of the Alienation of Land Act, he has still a perfectly good title to retain physical possession of the land under the operation of the provisions of S 14 of the Act. (*Mitchell, Khan v LAKSHMI CHAND*)

—S 3 (2)—*Order granting sanction to appeal*

An appeal can be filed from an order of the Commissioner granting sanction to an

PUNJ ALIEN. OF LAND ACT (1900), S 15

S 3 (2) of the Alienation of Land Act only by persons who are parties to that order. The only possible parties to such proceedings are the vendor and the vendee, the alienation in whose favour is sanctioned. The fact that the Commissioner when remanding the matter to the Deputy Commissioner for fresh decision directed him to issue notices to other persons claiming to be interested and to hear their side of the case before reaching a decision on the point actually before him, does not make those other persons parties to the proceedings before the Deputy Commissioner. (*Mitchell, F C*) *SARDAR KHAN v LAKSHMI CHAND* 18 Lah L T 31

—S 3 (2)—*Sale of land in notified area—Sanction if necessary*

In the case of a sale of land in a notified area, the sanction of the Deputy Commissioner under S 3 (2) of the Alienation of Land Act is necessary. Under the notification of the Punjab Government No 16176 dated 21st June, 1919 every area included within the limits of any

SARDAR KHAN v LAKSHMI CHAND 18 Lah L T 31

—S 6—*Deputy Commissioner—If Revenue Officer*

Reading together the provisions of Ss 19 and 23 of the Punjab Alienation of Land Act along with those of S 6 of that Act, it is clear that the Deputy Commissioner and the higher officers who have been empowered to act under the Act must be looked upon as Revenue Officers' within the meaning of S 6 of the Act. (*Shide, J*) *MALAWA MAL v PUNJAB PROVINCIAL GOVERNMENT* 41 P L R 467 =

A I B 1939 Lah 526

—S 6—*Mortgage by agriculturist to agriculturist to pay debt due by mortgagor to non agriculturist—Legality*

It is not illegal for an agriculturist coming in and taking the land of another agriculturist in sale or mortgage, undertaking in exchange to pay the debt due by the mortgagor to a non agriculturist. (*Tek Chand, J*) *NATHU KHAN v FATEH MUHAMMAD*

—S 15—*Vendor wishing to sell other area in lieu of original area—Fresh sanction—If necessary*

The sanction given by the Deputy Commissioner must be confined to the area which is originally sold. If the vendor wants to sell some other area in lieu of the original area a fresh sanction would be necessary.

PUNJ. ALIEN. OF LAND ACT (1900), S. 16.

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184 I.C. 419 = 12 R.L. 227 =
A.I.R. 1939 Lah 141—S. 16—*Taurs within abadi—Protection from attachment.*

Where the taurs have not been shown to be outside the abadi, and there is no separate khasra number given to them in the revenue record nor have they been shown to have ever been cultivated, such taurs are not protected from attachment and sale in execution (Teh Chand, J.) NATHA SINGH v. BHAG MAL

A.I.R. 1939 Lah 316

—Ss 19 and 3—Sanction of sale by Deputy Commissioner—Revision—Powers of Financial Commissioner. See PUNJAB ALIENATION OF LAND ACT, SS 3 AND 19. 41 P.L.R. 467

PUNJAB COLONIZATION OF GOVERNMENT LANDS ACT (V OF 1912), S. 10 (4)—*Allottee, when becomes tenant*

As soon as the necessary written order is passed by the Collector, and the allottee takes possession of the land allotted to him with his permission, he becomes tenant within the meaning of the Act. Even before acquisition of occupancy rights the original allottee his successors must be deemed to be tenants for the purpose of the Act. (Dalsip Singh, Monroe and Bhide JJ.)

LEHNA v. PATHANA. I.L.R. (1939) Lah 385 =
184 I.C. 286 = 12 R.L. 198 =
A.I.R. 1939 Lah 419 (P.B.)

—S. 19—*Mortgage with sanction of officer duly empowered—Legality.*

A mortgage effected with the sanction of a Col

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A contract of the parties is nonetheless a contract because there is superadded to it the command of a Judge. After the death of a widow the land standing in her name was mutated by Collector in favour of collaterals. The daughters of the widow brought a suit for declaration that the order of mutation was void. The parties subsequently entered a compromise decree in terms of the compromise had been made without consent of the Collector. The collaterals brought a suit for a declaration that the decree passed on the basis of the compromise was void.

Held, that the compromise being without the consent of the Collector was void and Civil Court's jurisdiction to pass decree on the compromise was barred under S. 36 (Shamp. J.) MT. RAKHO v. SMAILA
41 P.L.R. 889 = A.I.R. 1939 Lah 365

—S. 21—*Applicability—Original tenants whose rights ripen into occupancy tenancies.*

There is no distinction between tenancies which

tenancy rights—Succession to tenancy after her death—How governed.

PUNJAB COURTS ACT (1918), S. 41.

Original tenant means the first allottee and S. 21 (a) is restricted to those class of cases where the original allottee was a woman. Hence where land is allotted to a person subject to conditions issued under the Act and after his death his widow acquires occupancy rights, the succession to the tenancy after her death would be governed by S. 21 (b) and not by S. 21 (a) 141 Lah 168 and A.I.R. 1932 Lah 627, Appr., 11 Lah 282 and 12 Lah 529, Overr. (Dalsip Singh, Monroe and Bhide JJ.) LEHNA v. PATHANA

I.L.R. (1939) Lah, 385 = 184 I.C. 286 = 12 R.L. 198 =
A.I.R. 1939 Lah 419 (P.B.)

—Ss 36 and 19—Order of mutation by Collector in favour of collaterals—Declaratory suit by daughters—Compromise decree dividing land between parties without consent of Collector—Validity—Jurisdiction of Civil Court. See PUNJAB COLONIZATION OF GOVERNMENT LANDS ACT, SS 19 AND 36

A.I.R. 1939 Lah 365
PUNJAB COURTS ACT (VI OF 1918), S. 23—
Notifications Nos. 570 and 571 of 1889—Applicability

purposes of the Succession Act are inconsistent with the N.W.F.P. Courts Regulation which abolished Divisional Courts. Hence those Notifications ceased to have any effect.

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41 P.L.R. 145.
—S. 39 (3)—*Senior Subordinate Judge empowered by notification to hear appeals lying to District Judge—Status of—If subordinate to District Judge for pur-*

appeals so preferred, only means that the Subordinate Judge so invested with appellate powers can dispose of appeals which but for the notification would lie to the District Judge only and does not affect the status of either Court or the relationship *inter se* of a District Judge and a Subordinate Judge in the same District. The Senior Subordinate Judge so empowered still remains subordinate to the District Court and to the High Court. Hence

100 I.C. 800 = 12 R.L. 120 =
A.I.R. 1939 Lah

PUNJAB COURTS ACT (1918), S. 41.

—S 41—*Finding on custom not based on any evidence—Certificate, if necessary*

Where the Judge's finding on the question of custom is not based on any evidence it can be interfered with in second appeal even without a certificate (*Dalip Singh, J*) **PALA SINGH v KARAM SINGH**

41 P L R 812 = A I R 1939 Lah 366

—S 41—*Question of custom—Question whether widow can exchange for consolidating holding for benefit of estate*

The question whether by custom in a particular tribe a widow has or has not power to exchange land for the purposes of consolidating her holdings provided that consolidation is for the benefit of the estate is a question of custom (*Dalip Singh, J*) **PALA SINGH v KARAM SINGH**

41 P L R 812 = A I R 1939 Lah 366

PUNJAB COURT OF WARDS ACT (II OF 1903)

S 31—*Applicability*

S 31 of the Court of Wards Act applies only to claims duly notified under S 26 of the Act (*Darling F C*) **CHATHATH v EMPEROR**

18 Lah L T 17

—S 33—*Revision petition to Court of Wards—Limitation*

Although S 33 of the Court of Wards Act does not prescribe any period of limitation for an application to the Court of Wards for revision of an order made by the Deputy Commissioner, such an application should be

PUNJ LAND REVENUE ACT (1887), S 44

sale is taken away by a new enactment before the record was sent to the revenue authorities to arrange for the lease and consequently the provisions of the Punjab Debtors' Protection Act cannot be said to have been applied retrospectively by the revenue authorities and the Civil Court refusing to sell the land, as it was no longer subject to attachment and sale (*Abdul Rashid, J*) **NAND MAL DURG DAS v NAZIR AHMAD**

41 P L R 635 = A I R 1939 Lah 168.

—S 10—*'Standing crop'—Fruit of garden*

Fruit of a garden is a crop within the meaning of S 10 and is therefore not liable to attachment (*Abdul Rashid J*) **LAL SINGH v DISTRICT OFFICIAL RECEIVER**

183 IC 651 = 12 R L 128 =

A I R 1939 Lah 101

—S 12—*Sum given as advance for sale of shop—If 'loan'—Entry as to its receipt proved—Want of consideration—Onus*

A sum paid in advance for a shop which is to be sold is not a loan under the Debtors' Protection Act. If therefore, the execution of an entry as to the receipt of that sum is proved the onus ordinarily speaking shifts on to the executant to prove that the entry was made without consideration (*Dalip Singh, J*) **SHIB LAL v MST GOBANDI**

41 P L R 513 =

A I R 1939 Lah 562

PUNJAB EXCISE ACT (I OF 1914)—*Notification*—*Provincial Insolvency Act, S 59*

S 59 of Punjab Act II of 1920 does not bar the Official Receiver from contesting a suit instituted by the insolvent's son for a declaration that a certain property does not belong to the insolvent but to himself, having been willed to him by his grandfather. The Official Receiver is a representative of the insolvent for all purposes and he is fully entitled to resist the suit of the plaintiff on the ground that the will in his favour is not valid by virtue of S 59 of the Provincial Insolvency Act (*Addison*)

PUNJAB LAND REVENUE ACT (XVII OF 1887) S 15—*Ground for review—Subsequent events*

There can be no review of an order on account of something which has happened since that order was passed (*Garbett, F C*) **SHERA v GHULAM HUS SAIN**

18 Lah L T 38

—S 16—*Ground for revision—Failure of appellate Court to apply itself to problem before it*

An application for revision lies under S 16 of the

property of an insolvent by the Official Receiver (*Jeh Chand, J*) **ANUPA v OFFICIAL RECEIVER AMBALA**

41 P L R 128 = A I R 1939 Lah 257.

—S 5—*Application of—Insolvents*

—S 9—*Act to Collector to*

into the debtor's land the liability of the land to attachment and

—S 44—*Entry in record of rights—Presumption as to*

Under S 44 of the Punjab Land Revenue Act an entry is presumed to be true unless it is lawfully contested. It is not lawfully contested if it is not contested by the owner (*WALLAN v*) **5 B R 531 =**
180 IC 770 =
19 O L R 229 =
939 R D 339 =
A I R 1935 PC 114 (PC)

—S 41—*Mutation proceedings—Admissibility—Need for production of revenue officials*

Entries in mutation proceedings can be accepted as evidence, even without the revenue official who sanc-

PUNJ. LAND REVENUE ACT (1887), S. 44.

tioned them being produced as a witness. (*Ram Lall*,
11

—*Entries not repeated in subsequent settlements.*

The entries in the *Wajib ul ars* are presumed to be correct until the contrary is proved, although they are not repeated in later settlements (*Skemp, J.*)

SHANKAR LAL v. KAILASH CHAND 183 I O 791 = 12 R L 137 = 41 P L R. 21 = A I R 1939 Lah 105

—Ss 52 and 61—*New assessment—Appeal by lambardar on behalf of village—Competency.*

A lambardar is competent to present an appeal
son, F
T. 21
parts

son.

A plea of private partition sets up a question of title under S 117 of the Punjab Land Revenue Act, and it is the duty of the Revenue Officer to adjudicate upon it. (*Dobson, F. C.*) DHIAN SINGH v DALIP SINGH

PUNJAB MUNICIPAL ACT (1911), S. 169.

Where a Municipal Committee has served notice on a person to remove structures on the ground that the land is required for the Committee and that person brings a declaration that the site in dispute was owned and possessed by him without giving notice to the Committee, the suit is not barred by S 49 (*Skemp, J.*)

DINGA v. FATEH MOHAMMAD 71 = A I R. 1939 Lah 254 (1933)—*Applicability—*

able under S. 81 of the Act
 ble by the Committee under
 d is not recoverable under
 a contract apart from the

Act, the same cannot be recovered by the procedure prescribed under S 81 A.I R. 1938 Lah 29, Folt. (*Almond, J.C.*) DIL JAN v MUNICIPAL COMMITTEE PESHAWAR 184 I O 16 = 12 R Pesh. 24 =

40 Cr L J. 851 (1) = A I R. 1939 Pesh 40.

—Ss 81 and 82—*Recovery of octroi and terminal tax—Remedies available to Committee.*

Section 82 does not take away the remedies which are available to the Municipal Committee for the collection of arrears of a tax S 82 merely provides an additional remedy in the case of octroi and terminal tax. The words "arrears of any tax" in S. 81 must be given their ordinary meaning and if octroi or terminal tax has not been paid when it is due, the recovery of such a tax is the recovery of arrears of any tax. As the tax is payable for the export of goods, the exporter must be held to be liable for such a tax. It is not necessary for the

AZIM KHAN.

PUNJAB MUNICIPAL ACT (1911), S. 169.

—*Notice by Municipality to demolish structures on land in possession of owner and in possession of land in necessary.*

PUNJAB MUNICIPAL ACT (1911), S 169

mittee from leasing out the site in dispute especially as the site was at some distance from the building of the plaintiff (*Abdul Rashid J*) **MUNICIPAL COMMITTEE, HAFIZABAD v BHOLA NATH** 41 P L R 234 =

A I R 1939 Lah 44

—S 169 (g), Proviso—Burden of proof

The Provision to S 169 (g) is of considerable importance. The Municipal Committee cannot act arbitrarily and prejudice the rights of the public in disposing of a part of the public street on the mere pretext without any substance behind it, that it is no longer wanted as a public street. Where by doing so, they will cause damage to the vested interests of members of the public the burden lies heavily upon them to prove that in fact the portion of land is no longer required as a public street. **KASTURI LAL SARTI v JAGRAON** 41 P L R 234 =

—S 191 (as amended)

S 191 of the Municipality

of 1933 has no retrospective operation and has therefore no application to a sanction given by the Municipal Committee before its amendment (*Skemp J*) **MUNICIPAL COMMITTEE, DELHI v MOHAMMAD ALAKKI** 41 P L R 472 = A I R 1939 Lah 516

—S 229—Sub-committee by resolution—Compounding case of encroachment—Resolution not repudiated by Committee—Effect of

A sub-committee in a Municipality is entitled to compound under S 229 an offence with respect to an encroachment when authorized to do so by the Municipal Committee. Where a sub-committee by a resolution compounds a case of encroachment on payment of a penalty and the order is not repudiated by the Municipal Committee, but on the other hand the payment of the penalty is accepted by its officer, the Committee as a whole, or the administrator standing in its shoes, is bound by the resolution of the sub-committee (*Skemp J*) **ADMINISTRATOR LAHORE MUNICIPALITY v JAGAN NATH** A I R 1939 Lah 581

—S 232—Order of Committee—Suspension—Power of Deputy Commissioner

There is no distinction between the suspending execution of any resolution or order of a Committee and prohibiting the doing of an act. The Deputy Commissioner or the Commissioner can prohibit the doing of an act only if it has not been already done and can also suspend the execution of a resolution or order, if that order has not been carried out. Where an order of the Committee in pursuance of a resolution passed by it has been carried out it is not within the competence of the

PUNJAB PRE-EMPTION ACT (1913), S. 8

on the date on which the members of that Committee would have ceased to hold office if the Committee had not been superseded. (*Munroe, Bhide and Blaker, JJ*) **MOHAMMAD ARIF v ADMINISTRATOR, LAHORE MUNICIPALITY** 184 I C 237 =

12 R L 186 = 41 P L R 504 =

A I R 1939 Lah 369 (F B).

—S 238 (2) (b)—Powers of administrator

An administrator appointed by the Provincial Government under S 238 (2) (b) of the Punjab Municipal Act to exercise the powers and duties of a superseded Municipal Committee can legally exercise any power which might have been exercised by that Committee before it was superseded including the power to

PUNJAB PRE-EMPTION ACT (1 OF 1913) S 4**—Agricultural land—Meaning of**

The expression 'agricultural land' in the Punjab Pre-emption Act has a technical meaning in that Act the definition of the expression being the same as in Punjab Alienation of Land Act. According to that definition the land must have been used for agricultural purposes or purposes subservient to agriculture. Where the land has not been so used for a period of nearly 20 years but has been lying uncultivated except for one year, when there was a garden on a small portion of it, it cannot be said to fall within the said definition. (*Bhile J*) **MANSARAM v SADHU RAM**

A I R 1939 Lah 554

—S 4—'Sale'—Transfer for cash and scries—If amounts to—Price for pre-emption

It is a question of fact for the Court to consider in each case whether or not there has been a sale and the nature of the consideration is only one of several factors to be considered in arriving at that conclusion of fact. A transaction may be a sale although the consideration does not consist mainly or wholly of cash. A transfer of land in consideration of service and money spent by the transferee in helping the transferor to conduct a certain litigation is a sale and is pre-emptible on payment of the market price to be ascertained by the Court. (*Attisani and Hari Lal JJ*) **BAHAWAL v AMIR** 184 I C 805 = 41 P L R 409 = A I R 1939 Lah 543

—S 8—Applicability—Area subject to restrictions applied on neighbouring cantonment

S 8, Punjab Pre-emption Act, can only apply to a

—S 238—Period of supersession—Limit for—Administrator's tenure of office

Whether a Municipal Committee superseded by the Local Government under S 238 (1) of the Punjab Municipal Act is by the act of supersession annihilated or remains dormant during the period of supersession there is no warrant for applying as a limit for the period of supersession the limit fixed by the Act for the

sions of the Act are extended to an area beyond a Cantonment under S 288 of the Act will not have the effect of converting that area into a Cantonment. (*Addison and Ram Lal JJ*) **KAJA SINGH v KHAZAN SINGH** I L R (1939) Lah 159 =

182 I C 563 = 12 R L 60 = 41 P L R 69 =

A I R 1939 Lah 59

—S 8 (2)—Notification No 1718 R dated 14th on past sales

Notification No 1718 R published declaring that no right of pre-emption in respect to any land or property public auction under the orders of the Government for future sales and not to past sales. It does not affect sales for pre-emption in

superseded Committee does not become *functus officio*

PUNJ REL OF INDEBTEDNESS ACT (1934),

S 17.

tion to hear applications by creditors for revival of debt (*Dalip Singh v*) PAL SINGH v SUNDAR DAS
182 I C 604 = 12 R L 57 = A I R 1939 Lah 97
—S 17 (2)—Agreement to liquidate debt by lease of property—Registration if necessary—Executing Court, if can go behind decree

One M applied to the Board for settlement of his

by the Board and the creditor, then put it in a Civil Court, asking for its execution under S 17 (2). That decree simply was to the effect that the debt would be liquidated by farm of a certain property for 12 years. The execution Court refused execution on the ground that the agreement entered into by M and his brothers was without *jurisdiction* and the High Court held in

had no jurisdiction to go behind the decree. It was the

A I R 1939 L

—S 21—Order under S 13 (2) ultra

Board—Jurisdiction of Civil Court

If the order passed under S 13 (2) of Act VII of 1934 declaring a debt to have been discharged is *ultra vires* of the Board S 21 does not apply and a suit lies in the ordinary Civil Courts (*Tek Chand v*) TAJA v MT DEVI 41 P L R 242 = A I R 1939 Lah 327

—S 35—Onus of proof

The onus to prove the qualification prescribed by S 35 'not let out on rent or lent to others or left vacant for a period of a year or more' is on the judgment debtor when he has special knowledge of the facts (*Skemp v*) GURDIT SINGH v HARI RAM SINGH

A I R 1939 Lah 503

PUNJAB SMALL TOWNS ACT (1922), S 3

son and Ram Lal, JJ) ISHAR DAS v MOHAN SINGH 41 P L R 777 = A I R 1939 Lah 239

—S 16—Sikh Gurdwara—Proof—Udasi Mahants

—Reading of Granth Sahib

The Udasi order constitutes a separate sect, distinct from the orthodox Sikhs. The Udasis occupy an intermediate position between strictly orthodox Sikhs and Hindus. They are in fact a monastic order in their origin, followers of Bawa Siri Chand son of the first

Though they worship samadis etc, they do not to the Granth Sahib without completely renouncing

gurdwara. They are often in charge of a village Dharmashala or Gurdwara, which is a Sikh institution, but in other cases the Sadh and his chelas constitute a monastery or college. Owing to their intermediate position it is possible for Udasis to be in charge of a Sikh Gurdwara properly so called but it does not follow that the institution is a Sikh Gurdwara and not a true Udasi institution merely because the Granth Sahib is read in it. Where therefore it is established by evidence that the mahants of an institution have all along been Udasis, that the institution is an Udasi monastery that although the Guru Granth Sahib is read there by the Udasi Mahant and Sikhs attend these readings, still, the

adasi are

genuine

dasis also

they do

41 P L R 777 = A I R 1939 Lah 239.

—Ss 108 and 113—Investment of General Board Fund—Duty of custodian

The custodians of the General Board Fund can advance loans or make investments. But if while making such advances to the Parchar Fund exceeding the amount allowed by the Act to meet the future needs of the Parchar Fund or pay off expenses already incurred, the reasonable possibility of the return of the advances so made or as to the time and mode of its repayment is not kept present in the minds, then though the custodians of the General Board Fund and the

A I R 1939 Lah 23

PUNJAB SIKH GURUDWARAS ACT (VIII OF 1925) S 16—Sikh Gurdwara—Finding by tribunal—Judgment in rem

A finding by a Sikh Gurdwaras tribunal that an institution is not a Sikh Gurdwara is a judgment *in rem* and establishes that it is not a Sikh place of worship (*Abdi*

towns

A notification making certain provisions of the T. P. Act applicable to municipalities and notified areas does not apply to areas which have already become Small Towns before the date of the notification. The provisions of S 3(a) of the Punjab Small Towns Act are inapplicable to the case (*Abdul Rashid, v*) SRI

PUN. SUBOR SERVICEPUNISHMENT AND APPEAL RULES (1930), R. 6.

RAM S. MAM RAJ. 182 I.C. 952 = 12 R.L. 82 =
41 P.L.R. 23 = A.I.R. 1939 Lab. 231.

DEPARTMENTAL SERVICE PUNISHMENT

to fresh departmental enquiry

set out *de novo* and a fresh decision arrived at after due consideration of the High Court order, care being taken to hear his case in the proper manner. (*Dob F.C.*) BIHARI LAL v EMPEROR 18 Lah.L.T.

—B 8—District Office Manual, Chap. 3, Apt (b)—Mukarrar applying for leave submitting certificate of illness—Order directing him to obtain certificate from civil surgeon—Probitiv

own co-t. Practitioners of lesser status are not necessarily dishonest. (*Dobson, F.C.*) ABDUL HAMID v. EMPEROR. 18 Lah.L.T. 15.

PUNJAB TENANCY ACT (XVI OF 1887), S. 44

18 Lah
—S. 48—Ejection of tenants—When emp
S. 48 of the Punjab Tenancy Act makes it the Revenue Courts should not proceed to eject when the injury suffered by landlords is such be reasonably remedied otherwise. To eject a tenant

deceased occupancy tenant.
The provisions of the Punjab Tenancy Act regulate

—S 59—Sale by widow of occupancy rights to landlord—Right of reversioners to challenge.

Y. D. 1939—65

PUNJ. VIL. PANCHAYAT ACT (1922), S. 39.

A sale of occupancy rights to the landlord by the widow of the occupancy tenant would extinguish the tenancy, and the reversioners could not challenge the

there are reversionary rights
NGH v. HASSU.

= A.I.R. 1939 Lab. 374.
reversionary rights along with son

succession to an occupancy right of the deceased occupancy tenant, the deceased son, the succeed along with
BIH v SHAHAB-

UD-DIN 184 I.C. 103 = A.I.R. 1939 Lab 428.
—S. 80—Finding of fact—Second appeal—If barred—C.P. Code, S. 100

JIVAN v. JUMMA 10 Lah.L.T. 51.
—S 80—Further appeal—When barred.

Under S. 80 of the Punjab Tenancy Act a further appeal is barred only when the confirmation of an original order or decree on first appeal is complete and wholly partial. (*Garbett, F.C.*) JIVAN v JUMMA 18 Lah.L.T. 51.

S4 and 48—Erroneous decision—Revision.

—S. 84 (5)—Revision—Powers of Financial

the Financial Court a revision has been a wrong not allege that there has been any failure of jurisdiction, or improper exercise of jurisdiction. (*Garbett, F.C.*) BAKHSI 18 Lah.L.T. 37.

HAYAT ACT (III OF 1922)
—Jurisdiction of Civil

against panchayat for it from demolishing certain resolution passed at the panchayat as the chabutra in and not on a passing the scope of its contained in ra is private and the asked for. If a public work to be and

will be dismissed, unless it is established that the resolution was passed *mala fide*. (*Tek Chand, J*)

RAILWAYS ACT (1890).

NATH SAHAI v SAHSAI PANCHAYAT.

A I R 1939 Lah 372

RAILWAYS ACT (IX OF 1890)—Offer and accept

was applied to the goods at the station of despatch so as to entitle the Railway Company at the station of destination to reclassify the rate Condition No 6 printed on the back of the R R has to such a case (*Mulla, J*) MOTILAL DAYAL v B P T RAILWAY 1939

1939 A W R (H C) 595=A I R

—Ss 28 and 41—Civil suit after expression of opinion by Advisory Committee—Maintainability

Where there has been an omission by a Railway Company in violation of Chap V of the Railways Act the remedy provided for in the Act is laid down in S 28 and S. 41 excludes the jurisdiction of the Civil Court If an aggrieved party asks for an opinion in his favour and thereafter damages his suit is not maintainable MEGHJI HIRJEE & CO v BENGAL NAGPUR RAILWAY. 1939 N L J 124=A I R 1939 Nag 141

—S 30—Who is invested with the powers of a High Court—The Governor General in Council

Council is no doubt the supreme executive India but there is no statute constituting (*Gruer, J*) MEGHJI HIRJEE & CO NAGPUR RAILWAY 1939

A I R 1939

BANBIR PENAL CODE, S 188.

SECRETARY OF STATE v. SADHO LAL

1939 A W R (H C) 762=1939 A L J 905=

A I R 1939 All 748

—S 77—Scope of—Overcharge—Meaning of

S 77 of the Railways Act certainly assumes the possibility of claims for overcharge, but all it means is that

the general law An overcharge is simply a charge of more than is permitted by law The word should be interpreted in a wide sense (*Gruer, J*) MEGHJI HIRJEE & CO v BENGAL NAGPUR RAILWAY 1939 N L J 124=A I R 1939 Nag 141.

—S 77—Section, if mandatory—Notice in notice

railway authorities to deprive their customers of their just dues But the railway authorities are entitled to

complaint from railway authorities—Complacency

It is within the competence of the Police to put up a charge sheet in respect of an offence under S 122 of the Without a written complaint from the authorities A complaint filed by the Police written complaint of the railway authority or complaint (*Lakshmana Rao, J*)

PUBLIC PROSECUTOR v APPALANARASAYYA

1939 M W N 876

BANBIR PENAL CODE S 84—Accused not insane at time of offence—Right to benefit of section

An accused person who was not insane at the time of the offence given the benefit (*Abdul Qasim,*

note in 10011 11 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

CO., LTD v BALABUX

A I R 1939 Cal 31

—S 72—Risk notes A and H—Failure to establish identity of consignment—Non delivery—Misconduct—Effect.

Where it is found that the identity of the consignment sent under risk notes A and H had not been proved

RANBIR PENAL CODE, S. 323.

Under S. 188, Ranbir Penal Code, sentences in all cases should be effective and adequate according to the circumstances of each case. (*Abdul Qayoom, C.J. and Kichlu, J.*) **STATE v. ABDULLA KHAN**

41 P.L.R. J & K 54

— S 323—Offence under—Opinion of medical man

RANGOON INSOLVENCY ACT (1909) S. 55.

be proposed has been obtained in a legal and regular manner. Where a notice says that meeting is to be convened for the consideration of a report which had been called for as a result of a proposed resolution to appoint a new Legal Adviser after the usual advertisement, and when the report named no particular indi-

— S 324—Light sentence—Property

A sentence of imprisonment is ridiculously inadequate for a person under S 324, injuries with a hatchet

To constitute the offence of the Ranbir Penal Code that the accused person employed means in compelling or from one place to another

HUSSAIN v. HASSAN

— S 363—Offence under—A.

The age limit for the offence Jammu and Kashmir State is not upon under S. 363, Ranbir Penal Code. A presumption cannot be maintained.

MOHAMMAD DIN v. STATE

— S 366—Evidence—Statement of Value of.

In a case under S. 366 of the Ranbir Penal Code the statement of the abducted girl is very important and

Legal Adviser, thereby entirely dispensing with the usual position within the court, not being) FRIEDLANDER

4 = 181 I C 630 =
1939 Rang 130.
(1909), S. 13 (4)

belong to insolvent.

Whenever an order suspending a discharge is made,

Ranbir Penal Code (*Abdul Qayoom, C.J. and Wazir, J.*) **MAHOMED ANWAR KHAN v. STATE.**

41 P.L.R. J & K. 100.

— S 447—Intention to annoy—Presumption—Demolishing another's property during his absence

Under S. 447 of the Ranbir Penal Code, the intention of a person can only be judged by his action. If a person goes and demolishes property belonging to another it will be presumed that the person demolishing the property intended to cause annoyance to the owner of the property whether the owner of the property is actually present at the time of the commission of the act or not. (*Abdul Qayoom, C.J.*) **BANSI LAL MAHAN CHAND v. KIRPA RAM.**

41 P.L.R. J & K. 81

RANGOON CITY MUNICIPAL ACT (VI OF 1922), S. 230—Rules under—R. 7 to Sch. I, Ch. 9—

Notice to convene meeting to consider report of committee regarding appointment of a Legal Adviser—Report naming no particular individual—Appointment of named individual without advertisement—Irregularity

the discharge. In the case of an order of suspension of discharge under S. 39 (1) (c), the discharge of the insolvent is complete as soon as the Official Assignee has in hand a sum sufficient to declare the required dividend of four annas in the rupee. *plus*, of course, the expenses of the proceedings and his commission, and if any further sums should come into the Official Assignee's hands they are the property of the insolvent and must be refunded to him. (*Dunkley, J.*) **MAUNG TIN U, In the matter of.**

1939 Rang L.R. 676.

— S 39 (1) (c)—“Creditors”—Meaning of

In S 39 (1) (c) of the Act, the word “creditors” means, and can only mean, the creditors who have proved their debts, because a person does not become a creditor of an insolvent merely because the insolvent has entered that person's name in the schedule, and he only becomes a creditor, meaning thereby a person who can rank for dividend in the insolvent's estate, when he has proved his debt. (*Dunkley, J.*) **MAUNG TIN U, In the matter of.**

1939 Rang L.R. 676.

— S 55—Transfer in favour of agent—Absence of

members of the Council to any appointment which may be made, but proof of the nature of the transaction was that a transfer is without good consideration is on the Official Assignee of the parties to the transaction

the transfer to an insolvent's agent does not shift the burden which lies on the Official Assignee to prove want of good faith and valuable consideration. (*Roberts C J and Dunkley J*) PALANIAPPA CHETTYAR v OFFICIAL ASSIGNEE 179 IC 463=

11 RR 322=AIR 1939 Bang 51
—Ss 71(1)(a) and 122—Retention of funds—Powers of Official Assignee

S 71(1)(a) of the Rangoon Insolvency Act provides for the only case in which funds have to be or can be reserved by the Official Assignee. This section however, follows S 63 and is in connection thereto and it refers only to *interim* dividends and not to the final dividend. When the final dividend has been properly declared, no creditor has a right to come forward and tender proof of his debt and claim to participate in the dividends which have been declared. Such reservation of amounts for the benefit of creditors who have not proved their debts is not a reservation of unclaimed dividends which are dealt with in S 122 of the Act. This latter section refers to dividends due to creditors.

dividend (*Dunkley, J*) MAUNG TIN U, In the matter of 1939 Bang LR 676

—S 76—'Surplus'—Meaning of

S 76 of the Act refers to the surplus of money which have been lawfully received by the Official Assignee, and not to moneys improperly received after the liquidation of the insolvent has become absolute. The v

Official Assignee
MAUNG TIN U
676
to be a
venue

property for the benefit of all the priority is in the inverse order. This principle of the rule of salvage is applied in India as a rule of justice, equity and good conscience. Apart from this salvage lien, there is no right vested in the Courts to interfere with mortgages already created on the property which they are administering through a receiver, nor have the Courts when administering an estate or mortgagors in a suit between them *inter se* any power to destroy or curtail the rights of the mortgagors in the exercise of its discretion to grant them leave to sue on the mortgages or execute mortgage decrees already obtained. Rights which had already been created before the property came in *custodia legis* cannot in any way be affected by any order passed in such a suit to which the mortgagors are not parties and in which their rights are not involved. A summary proceeding for giving leave to sue, or execute a decree against property in the hands of a receiver is not appropriate for settling disputed priorities and is even less so for enforcing them. Though a Court can while giving leave to sue a receiver give directions, this

proceeding for leave under the inherent powers of a Court (*Khaja Mohammad Nazz and Dazle JJ*) SOURENDRA MOHAN SINHA v KUMAR JOGENDRA NARAIN SINHA 18 Pat 279=183 IC 770=5 BR 983=12 EP 179=AIR 1939 Pat 467

advertisement and sufficient notice—Necessity for

Receivers holding sales under the direction of the Court should unless there are special circumstances or otherwise directed by the Court, follow the rule laid down by the C P Code and give not less than thirty days' notice of sale as prescribed in the case of an execution sale under the Code. Of course it is open to the

ACT

RECORD OF RIGHTS—Entries in—Presumption—Rebuttal—Assertion of right made in deed executed earlier—Evidence Act, S 13

An entry in the record of rights must be presumed to be correct at the date when it was finally published. An assertion of a right made by a donor in a deed of gift executed several years earlier cannot be used to rebut that presumption. f) MARKH 1

—Extraordinary value

The record-of-rights is of no better value than any other piece of truthful evidence. There is a presumption

Appointment in execution of money decree and in suit by equitable mortgagee to enforce mortgage—Rents and profits—Preferential rights of mortgagee as against money decree holder. See MORTGAGE—EQUITABLE MORTGAGE 49 LW 120

Borrowings by—Debt incurred under orders of Court—Priority over mortgage debts incurred before appointment of receiver—Administration suit between mortgagors *inter se*—Order of Court making debt of receiver first charge—Legality—Salvage lien

A Court, while administering an estate through a

RECORD OF RIGHTS

a piece of reliable evidence and at the same time consider the other evidence in the case. (*Wort, J.*)
MOKHADA DAS v. LAKSHMI NARAIN DAS
 182 I C 746 = 5 B R 819 = 12 R P 59 =
 A I E. 1939 Pat. 221

— *Preparation—Enquiry—Duty of Revenue officer.*

The duty of the Revenue officer at the time of preparing the record of rights is not confined merely to ascertain who is in actual occupation of the land and to record the land in his khatian. He has to ascertain further whether such occupation amounts to possession and the nature of such possession. (*Sen, J.*) **SECRETARY OF STATE v. DT BOARD OF KANGPUR**
 70 CL J 126 = A I R 1939 Cal 758

REGISTRATION ACT (XVI OF 1908), S. 17—
Agreement relating to future rights—Need for registration.

A transfer of reversionary rights is not tantamount to transfer of property and registration is not necessary in

— **S. 17—“Declaration”—Partnership—Dissolution—**
Agreement between partners that they had equal rights in immovable properties of firm—Agreement entered in daybook and signed by partners—Registration—Necessity—Admissibility in evidence without registration.

Where on the dissolution of a partnership which owned immovable properties held in the names of some

REGISTRATION ACT (1908), S. 17.

in evidence and can be read as part of the decree so as to affect immovable property comprised therein notwithstanding that it has not been registered. (*Varma, J.*) **JAGDISH NARAIN SINGH v. BANDE ALI MIAN**
 183 I C 467 = 5 B R 946 = 12 R P 158 =
 20 Pat. L T 328 = A I R 1939 Pat 406.

— **S. 17—Transfer—Statement by owner that he had given his property worth more than Rs. 100 to another—Effect of**

A mere statement in a Magistrate's Court by an owner of property that he had given up a portion of the property worth more than Rs. 100 to another is not sufficient to effect a transfer of the same which cannot be done except by a registered instrument. (*Davis, J. C. and Weston, J.*) **TILLUMAL v. MICHUMAL**
 I L R (1939) Kar 563 = 181 I C 982 =
 12 R S 16 = A I R 1939 Sind 128.

— **S. 17 (1) (b)—Different mortgage deeds between same parties—Each relating to separate land—Valued at Rs. 100—Each deed contains a clause that**
 27 up

into a number of similar transactions in order to make registration not compulsory. There were 14 different mortgage deeds between the parties, each mortgage deed relating to separate land being of a value of less than Rs. 100. Each of these deeds however contained a concluding clause as follows: “When I, the mortgagor, will pay up the entire money secured on the other 13 mortgage deeds to the mortgagee, I would get my land

The clause merely laid down a collateral agreement as to the date when the right of redemption in each mortgage shall be exercised. The statute must be strictly construed and the benefit given to the person who claimed that he was not bound by it. Hence the deeds did not need registration. (*Blacker, J.*) **BUTA SINGH v. ABDUL RAHMAN**
 184 I C 85 =
 12 E L 159 = 41 P L R 525 = A I R 1939 Lah 173.

— **S. 17 (1) (b)—Mortgage—Equitable mortgage—**
Memorandum relating to deposit of title deeds—When requires registration.

Where the parties professing to create a mortgage by deposit of title deeds contemporaneously enter into a contractual agreement, in writing, which is made an integral part of the transaction and is itself an operative instrument and not merely evidential, such a document must under the statute be registered. If a memorandum

states that it is in consideration of the property and refers for the protection

of this security or for procuring payment of the moneys hereby secured, and then it not only sets out all the terms on which the moneys were advanced but expressly confers a power of sale on the mortgagee, the memorandum does not merely evidence a transaction already completed but it is contractual in form and constitutes the agreement between the parties, and therefore requires registration. The mere fact that in a parenthetical passage the title deeds are stated to have been previously delivered with intent to create a security, does not alter the character of the memorandum itself, which if the parenthetical passage be disregarded is an instrument effective to create an interest in the property in favour

signed by all the partners, it amounts to a declaration falling within S. 17 of the Registration Act, and if unregistered cannot be admitted in evidence by reason of S. 49 of the Registration Act. It cannot be said that it is a mere recital of fact as opposed to something which creates title. On the other hand it is an instrument which declares the rights of the partners in the properties from the date of the dissolution of the partnership and therefore requires registration. The fact that it is entered in the day book and not drawn up separately makes no difference. (*Loach, C. J. and Somayya, J.*) **RAMAPPA v. THIRUMALAPPA**
 I L E. (1939) Mad 871 = 50 L W. 331 =
 1939 M W N. 866 = A I R 1939 Mad 884 =
 (1939) 2 M L J 640

— **S. 17—Entry relating to payment of advance for sale of shop—Need for registration**

An entry relating to payment in which it is to be sold is no more than advanced and cannot be considered money received for a sale of an and, therefore, does not need.

(*Singh, J.*) **SHIB LAL v. M. T. GOBANI**
 41 P L R. 513 = A I R 1939 Lah 442.

— **Ss. 17 and 49—Scope—Compromise including immovable property outside scope of suit—Non-registration—If operates to affect property not in suit—Admissibility in evidence.**

A decree based on a compromise which includes immovable property outside the scope of the suit and which is not registered is not altogether ineffective to pass title in respect of the property not included in suit. The decree is evidence of an agreement between the parties under which title is transferred or intended to be transferred. The compromise agreement can be adduced

REGISTRATION ACT (1908), S 17

mortgagee (*Lord Macmillan*) HARI SANKAR PAUL
v. KEDAR NATH SAHA. 43 CWN 806=
 (1939) 2 AIR ER 737=66 IA 184=
 ILR (1939) 2 Cal 245=1939 AWR (PC) 181=
 70 O LJ 163=181 IC 935=1933 OWN 570=
 50 LW 33=1939 OLR 385=5 BR 747=
 11 RPO 292=20 Pat LT 574=1939 OA 538=
 1939 ALJ 869=41 Bom LR 1144=
 1939 MWN 1166=AIR 1939 PC 167=
 (1939) 2 MLJ 622 (PC)
 ———(Bangoon) S 17 (1) (b)—Need for registra-
 tion—Test—Ultimate result of document—If material
 It is the document itself which must be looked at in
 deciding whether it requires registration and the im-

documents viz., a mortgage deed and a sale deed execut-
 ed by my elder brother have been read over to me and
 having understood (the same) I agree I have no
 objection and I shall not interfere with the said docu-
 ments and the said paddy land in future I agree to
 all. In witness whereof this deed is signed

SONI *v.* PHAYAGYI

AIR 1939 Rang :

—S 17 (1) (b)—Power of attorney—Registration
 —When compulsory

The only circumstances in which a power of attorney
 is compulsorily registrable under S 17 (1) (b) of the
 Registration Act are where it has been executed to
 authorise the donee to recover the rent of an immove-
 able property to the donor for the donee's own benefit
 for in such a case it amounts to an assignment and
 hence under Cl (b) it requires registration. Similarly a
 power of attorney which is intended to create a charge
 in favour of the donee on immovable property referred
 to therein requires registration (*Mishra S V and*
Mukta J V) RADHA BAI *v.* TEK SINGH
 1939 ED 203=1939 AWR (BR) 200

—S 17 (1) (b)—Registered lease—Agreement
 varying rent reserved in—Registration, if necessary

AIR 1939 Cal 416

—S 17 (1) (c)—Receipt for whole consideration

REGISTRATION ACT (1908) S 17.

A decree embodying the terms of a contract did not
 create or declare a fresh lease. It simply stated that
 the existing lease would continue on the same terms as
 before. The old lease was not ended nor was it varied
 by the decree although the assignee of the lessor waived
 his right to take rent for certain years in favour of the
 original lessor.

Held that S 17 (1) (d) did not apply. The reference
 to the lease in the decree did not make the decree a
 document registrable as a lease (*Coldstream, J*)
 DAULAT RAM *v.* HAVELI SHAH

41 PLR 346=12 RL 55=182 IC 538=
 AIR 1939 Lah 49

—S 17 (1) (d)—Compromise petition—Agreement

—Permanent lease of the right of holding to the
 10 in turn agreed to execute a kabuliyaat on
 ms and conditions as the patta, on the
 ch parties were at liberty to sue for specific

the intention of the parties as declared by
 the compromise was not to effect a present demise and
 that therefore it was not necessary that the compromise
 petition which was made part of the decree should be
 registered before it might be admitted in evidence
 (*Ghose J*) SWARNAMAYEE BASU *v.* SARAJUBALA
 DEBI 43 CWN 956

—S 17 (1) (d)—Lease for one year or
 of

peiod of one year, the
 mentioned therein is to
 which it relates does

—S 17 (1) (d)—Lease for one year fixing annual
 rent—Need for registration

Where a lease granted for a period of one year fixes
 an annual rate of rent which is to be paid monthly and
 gives the landlord after the expiry of one year the option
 to lease the property to the same tenant or to other
 tenants, the lease is not one reserving a yearly rent
 within the meaning of S 17 (1) (d) of the Registration
 Act and is therefore, not compulsorily registrable
 (*Ram Lal, J*) MENGH RAJ *v.* NAND LAL

41 PLR 616=AIR 1939 Lah 558
 —S 17 (1) (e)—Kobla transferring rent decree
 —Need for registration—Bengal Tenancy Act,
 S 65

A Kobla transferring a rent decree for more than
 Rs 100 cannot be registered under S 17 (1) (e) of
 the Act as it creates a charge on
 Kobla transfers both
 actual and rent is
 (*Justice Kishin J*)

JOY NAKAVANI *v.* JASANTIA KUJAR SEN
 43 CWN 858

—(as amended in 1929), S 17 (1) (e)—Scope—
 Final decree for sale—If immovable pro-
 perty—Assignment of decree worth Rs 100 or upwards
 registration—No entry

A final decree for sale on a simple mortgage drawn up
 in ordinary form must be regarded as immovable prop-
 erty for the purposes of Ch III of the Transfer of
 Property Act relating to sale of immovable property
 and a deed of assignment of such a decree is compul-
 sorily registrable under S 17 (1) (e) of the Registration

REGISTRATION ACT (1908), S. 17.

Act as amended by the T. P. (Amendment) Supplementary Act of 1929, if the value thereof is Rs. 100 or upwards (*Leach, C J and Patanjali Sastri, J.*) SHIVA RAO v

—S 17 (2) (vi)—

Awards—Necessity for

After amendment of

Act in 1929, awards which all then did not require registration have to be re-registered if they relate to im-

ILLR (1939) Nag 607=183 IC 845=12 RN 81=1939 N L J. 375=AIR 1939 Nag 233 (FB)

—S 17 (2) (vi) (Amendment of 1929)—*retrospective*

The amendment made in 1929 with reference to S. 17

—S 17 (2) (xi)—“*Purport to extinguish*”—*Interpretation—Receipt acknowledging payment of whole of mortgage money.*

The words “purport to extinguish” in S 17 (2) (xi) of the Registration Act cannot be interpreted as being equivalent to the words “have the effect of extinguish-

ARJAN SINGH, 183 IC 168=18 RL 101=41 PLR 101=AIR 1939 Lah. 272.

—Ss 23, 25 and 75—*Document presented after more than four months—Validity of registration.*

Where five months after its execution, a document was presented for registration when the executant

—S. 28—*Applicability and scope—Assignment of mortgage right—Registration in place in which one item of property lay without intention to pass that item under assignment—Assignor having no title to such item—Effect on registration—Validity of assign-*

A mortgage deed dated 20-6-11 of three items of properties one situated within the jurisdiction of the S. in District C. the other two being in an entirely

REGISTRATION ACT (1908), S. 28.

which was the only item in the registration sub district and district in which the assignment deed was registered, should pass under the assignment and that as the regis-

—Ss 28 and 29—*Applicability and scope—Mort-*

document—Limitation Act, Art. 110—Applicability.

The jurisdiction conferred on a Sub Registrar under S. 29 of the Registration Act is limited to receiving and registering every document other than a document referred to in S. 28. If a party desires registration of a document which is not a mortgage, it must be registered in the Sub Registrar's office. One he is pleased, moveable, and then

document from beginning to end. Where a mortgage deed containing a personal covenant is registered in a particular Registration office through the perpetration of a fraud on the Registration Law, both the mortgagor

ent cannot regard the the Limit- INDERDEO

SINGH v. RAMLAL SINGH 18 Pat 429=181 IC 482=5 BR 597=11 RP. 595=1939 P.W.N. 268=20 Pat LT 285=AIR. 1939 Pat. 502

—Ss 28 and 29—*Mortgage registered in wrong*

—S. 28—*Place of registration—Document if registered in proper place—Ten—Intention.*

The question whether a mortgage document is properly registered at a place where only a very fractional por-

tion or not is a question of intention assuming that the document is registered in the jurisdiction. An intention to be included in the document is a fact of fact, it, then, has no

REGISTRATION ACT (1908), S 30.

11 EN 330=1939 N L J 44=

A I E 1939 Nag 57 (FB)

—S 30 (1)—*Discretion under—Exercise of—Considerations—Wrong registration—Re registration*

The discretion conferred by S 30 (1) of the Registration Act is wide and unfettered. But it should not be lightly exercised and should not be exercised at all when there is gross negligence or carelessness or fraud. In a case where even the registering authorities themselves were misled and accepted a document and registered it, and were thus instrumental in lulling the parties into a sense of security it is pre-eminently right and proper that resort should be had to the exercise of these exceptional powers. The Act does not prohibit re-registration or impose a time limit within which it must be done and hence in order to prevent injustice to the parties flowing from the mistaken act of the registering

REGISTRATION ACT (1908), S 49

—S 49—*Lease deed unregistered—Admissibility to prove nature of possession*

An unregistered lease deed which is co-pulsorily registrable, can be used for a collateral purpose, viz., to determine the nature of the possession of the lessee (*Ram Lal, J*) *MENGH RAJ v NAND LAL*

41 P L R 616=A I E 1939 Lab 558

—S 49—*Scope—Agreement among partners of firm on dissolution entered in day book and signed by partners—Term that all the partners have equal rights in the immovable properties of firm—Non registration—Admissibility in evidence* See REGISTRATION ACT, S 17

50 L W 331.

—S 49—*Scope—Unregistered sale deed—Admissibility to prove nature and character of possession*

An unregistered sale deed of immovable property worth more than Rs 100 cannot be received in evidence for the

—Ss 32(a) and 34 (3) (a)—*Person executing sale deed under power of attorney—Power to present and*

—S 49—*Unregistered kabulyat—Admissibility to prove permanent tenancy*

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41 P L R 8=A I E 1939 Lab 161

—Ss 34 and 38—*Admission of execution obtained on commission—If can affect time fixed under S 34*

Where a Sub Registrar visits an executant on commission and obtains an admission of execution from the

—S 49 (as amended)—*Usufructuary mortgage for less than Rs 100—Creation of by unregistered deed accompanied by delivery of possession—Suit for redemption—Admissibility of deed—Evidence Act, S 91.*

register the decree if the decree is made from February 1932 (*Wort, Az C J and Manohar Lal, J*) *PAIPRATAP SRINARAYAN v DARSAN RAM*
178 I C 505=5 B R 110=11 B P 268=

A I E 1939 Pat 96

—S 49—*Applicability—Zar e peshgi lease for six years*

If a zar e peshgi lease for six years is unregistered, under S 49 of the Registration Act it cannot be used in evidence to prove the fact that there was such a lease (*Maria, S, M and Mela, J M*) *IASA SHANKER v PAJ RANI*

1939 B D 475=

1039 A.W.R. (B.R.) 218

refers only to questions of right, title and so forth which have already accrued and does not affect a question of admissibility in evidence. Therefore, the proviso to S 49 of the Registration Act which was introduced by S 10 of Act XXI of 1927 applies even to documents executed before April 1st, 1930 (*Ghose, J*) *SWARNA MAYEL DAS v SARAJUBALA DEBI* 43 C W N 958
—(as amended in 1929) S 49 proviso—*Scope—Agreement to terms of proposed lease of land—Subsequent execution of mohabika by lessee—Non registration—Effect—Suit by lessor for specific performance—Agreement prior to execution of lease—Proof of*

REGISTRATION ACT (1908), S. 49

A lessee of immovable property agreed to the terms of the contract of lease proposed by the lessor, and then executed a muchilika embodying those terms, but the same was not registered. In a suit by the lessor for specific performance,

Held, that the lessor was entitled to rely on the agreement and to prove it without the necessity of spelling out from the written lease itself (*Abdul Rahman, f*)
VENKATA SESHAYYA v DISTRICT BOARD, EAST
GODAVARI 184 I.C. 465 = 12 R.M. 459 =

1939 M.W.N. 165 = A.I.R. 1939 Mad 391 =
(1939) 1 M.L.J. 82

— S. 49 (c) — *Unregistered partition-deed — Admissibility — Proof of nature of possession.*

Where the fact of partition between the parties is admitted and the fact of possession of a certain property by one of the parties is established by oral evidence, an unregistered deed of partition might be referred to as explaining the nature and character of possession and that it led to the inference that the property had come to the party's share in partition, (*Skemp, f*)

SINGH v. AJUMAN IMDAD QAEZA 41 P.L.E.

— S. 50 — *Applicability — Prior unregistered taking effect by delivery of possession.*

The wording of S. 50 would seem *prima facie* to apply to previous unregistered deeds, whether they have taken effect by delivery of possession or not be unduly restricting the scope of the section it does not apply at all, when the previous transaction has taken effect by delivery of

(*Bhide, f.*) ILAHI BAKHSI v KALU MAL
I.L.E. (1939) Lah 261 = 182 I.C. 460 = 12 R.L. 35 =
41 P.L.R. 19 = A.I.R. 1939 Lah 29

— S. 50 — *Delivery of deed — If amounts to notice*

A person who takes the deed, with full knowledge obviously partly to the vendor he cannot succeed merely on the strength of his tendered deed. Delivery of possession may amount to notice of the previous title and the subsequent may fail owing to such notice but that would depend on the nature and circumstances of the possession.

obtained by the vendee was not of such a nature as would be held to be tantamount to notice of the previous title.

— S. 60 — *Due attestation of endorsement*

No presumption of due attestation

— S. 60 — *Endorsement — Statement of relationship in — Presumption of correctness.*

Y. D. 1939-66

RELIGIOUS ENDOWMENT

No presumption of correctness attaches under S. 60 of the Registration Act to a statement of relationship made in the endorsement of the Sub Registrar. (*Bhide, f.*)
KAHNA v. GOVERNMENT OF PUNJAB

41 P.L.R. 376 = A.I.R. 1939 Lah. 458

— S. 77 — *Applicability — "Refusal to register" — Sub-Registrar refusing to excuse delay in presentation of document — Failure to appeal to Registrar — Suit for registration — Maintainability*

Where a document is presented for registration to a Sub Registrar beyond the 4 months' period with an application under S. 25 (2) of the Registration Act to get the delay condoned, but the application is refused and the Sub Registrar makes an order "Registration refused," a suit under S. 77 of the Registration Act is not maintainable when there has been no appeal to the Registrar (*Broomfield and Norman, f.f.*) KISAN LAXMAN v DALSUKH 182 I.C. 943 = 12 R.L. 49 =
41 Bom L.R. 470 = A.I.R. 1939 Bom 264

— S. 77 — *Refusal to register — What amounts to, to stop the order of the Registrar.*

months also has expired and further stated that the document was not registrable under the Act.

Department — *Necessity — Prosecution by police, on complaint by Revenue Officer.*

Scope of S. 87 of the Registration Act in those cases in which an application is made out of time. (*Wor, A. C. f.*)
RAMPRAV S. 178 I.C. 525 = 12 R.L. 35 =

11 R.P. 268 = A.I.R. 1939 Lah. 29.

— S. 89 — *Scope — Non compliance — Effect of*

to the Sub Registrar for registration of a document under S. 89 of the Registration Act is not an offence under S. 7 of the Land Improvement Law. The Registration Act itself provides no penalty for non-compliance with the provisions of S. 89.

RELIGIOUS ENDOWMENT

See also (1) HINDU LAW.
(2) MUSLIM LAW.
(3) C. P. CODE, S. 72.
(4) DISTRICT.

RELIGIOUS ENDOWMENT

Debtor estate—Managing Committee by Court—Repairs executed by them without sanction—Power of Court to sanction payment

If a managing committee appointed by Court of a debtor estate executes repairs with reference to the Court it would be open to the overlook the fact that sanction for incurring the costs had not been previously asked for, and the Court may properly sanction the payment of costs which had been

any archaka right

A public temple is *res extra commercium*, and it is not open to a private individual to acquire by prescription any private ownership in regard thereto. The character of a temple as a public temple cannot be taken away by any assertion of private rights especially when there is no evidence that the public have ever been excluded therefrom. But where it is found that the descendants of a person introduced as an archaka in the temple have continued to be in possession as archaka and doing archaka service, setting up an exclusive right to the possession and management of the temple for nearly 30 years, and none of the trustees ever sought to interfere with their management or possession the inference is warranted that the descendants of the original archaka have acquired the hereditary archaka right in the temple and as such the right to be in possession and management of the temple. The trustees would have no right to interfere with that management except to exercise a general supervision over them as trustees, or to get a decree for possession (*Venkataramana Rao J*).
VISHNU NAMBUDEKI v RAMUNNI MARAR

1939 M W N 1143—(1939) 2 M L J 867

Temple committee—Powers and duties of—Power to dismiss trustee without enquiry or at pleasure and to appoint new trustee in his place. See RELIGIOUS ENDOWMENTS ACT, SS 13 AND 14

(1939) 1 M L J 9

Temple—Scheme—Clause preserving qualification for trusteeship—Prohibition against election of person convicted of non-compoundable offence—Person convicted subsequently repenting—If can be trustee—Analogy of suspended pleaders.

So far as pleaders are concerned, the control over them is vested in the Court to suspend them or strike them off the rolls and if a man has really repented the Court has always the right to restore the man to the profession. But the question of repentance has nothing to do with the interpretation of a clause in a scheme

Agreement by mahant transferring management to Sikk Committee—Validity

An agreement by a mahant of an Uda institution under which he hands over the management of a strictly

RELIGIOUS ENDOWMENTS ACT (1863), S 13

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—Applicability—If confined to endowments existing at time of its passing

SS 13 and 14—Powers and duties of trustee and temple committee—Interim trustee—Appointment by committee—Duration of—Powers of committee to dismiss—Grounds for dismissal—Failure to hold inquiry or to give opportunity to answer charges—Effect—Appointment of fresh trustee in place of trustee irregularly dismissed—Validity

In a temple to which the provisions of the Religious Endowments Act (XX of 1863) apply an interim trustee was dismissed by the Devasthanam Committee at a meeting, on the grounds that the trustee (1) failed to submit a detailed report of the temple leases amount of arrears of rent and sums collected (2) prevented members of the Committee from holding their meetings in the temple premises and (3) broke open bandi boxes without notice to the Committee. At the same meeting the services of the interim trustee, who was originally appointed to hold office till a permanent trustee according to the prevailing custom of the temple from the founder's family was appointed, were terminated and another person was appointed in his place. The dismissed trustee filed the suit and contended that his dismissal was irregular and illegal as he was not guilty of any misconduct that the appointment of a fresh trustee in his place till a permanent man was appointed was illegal and void, that the resolution of the Committee was *ultra vires* since the agenda did not contain the subject nor was any notice given to him of the nature of the charges that he was not afforded an opportunity to defend himself and that therefore an injunction restraining the Committee from interfering with the plaintiffs' possession and management of the temple properties should issue.

Held, (1) that under S 13 of the Act it is the duty of the trustees to keep accounts of receipts and disbursements and it is the duty of the Committee to require production of the accounts at least once a year. There was no suggestion in the case that the interim trustee had not kept correct accounts. Only if his conduct had

been a breach of trust or neglect of duty under S 14 of the Act could the Civil Court dismiss him. The Committee's powers than the Court had in the trustee was not a clerk or a person to be dealt with in any way at all. The complaint of neglect of duty, because the trustee must be of the same religiousness as the trust. The Committee's jurisdiction to dismiss the trustee from office was not affected by the decision in *Sugar v Nataraja Aiyar*, (1898) 1 L.R. 21 Mad 119 at 184 followed. (2) That without proper enquiry into the matter that the trustee was given the opportunity for explanation being given the trustee to meet the charges the dismissal was

1 L.R. 21 Mad 119 at 184 followed. (2) That without proper enquiry into the matter that the trustee was given the opportunity for explanation being given the trustee to meet the charges the dismissal was

RELIGIOUS PROCESSION.

invalid, 21 Mad. 179, (1916) 30 M.L.J. 619, 5 I.L.W. 672 ref. (3) Notice of the meeting at which enquiry will have to take place should set out the subjects of enquiry in the agenda, 54 M.L.J. 140 I.L.R. 51 Mad. 68, rel. (4) It was irregular and opposed to natural justice to dismiss the trustee without the necessity requirements of an enquiry, (5) The trustee though appointed *interim*, had what might be called a freehold in his possession since his appointment was up to the event of a permanent holder of the office being found and until that event occurred he was entitled to hold office of a trustee; (6)

from interfering with the trustee in his duties as trustee of the temple (*Gentle, J.*) VENKATASUBBA MUDA-

RIPARIAN RIGHTS.

TOYA v ASA RAM, 1939 A.W.R. (B.R.) 100=
1939 A.L.J. (Supp.) 80.

REVENUE RECORDS—*Khasra Girdawari*—*Entries in—Value of.*

Khasra Girdawari entries are admissible in evidence and they furnish important evidence upon the question of possession. (*Kishu, J.*) RAHMAN v AHMEDOO, 41 P.L.E. J & K. 15

—*Mutation—Entries—Presumption of truth.*

A mutation is not a part of the record of rights and unless a mutation entry has been incorporated in a jamapresumption of truth attaching to it. (*el. on. (Tek Chand, J.)*) NATHU MUHAMMAD, A.I.R. 1939 Lah. 395.

—*Patta not containing dimensions of land—Onus of proof that land claimed is covered by patta.*

—*Settlement records—Entries in—If rebuttable—Facts to be proved.*

Though the settlement entries of 1302 F. and 1334 F. are rebuttable, it is necessary for the opposite party to prove conclusively that they were wrong. It is not enough for them merely to show that it was unlikely that the other party's predecessor in interest cultivated at all. (*el. on. (Tek Chand, J.)*) NATHU MUHAMMAD, A.I.R. 1939 Lah. 395.

—*Village papers—Entry in as to rent—Value—Rebuttal.*

An entry in the village papers of rent has a certain sacred character in the eyes of the law. It can be rebutted. (*el. on. (Tek Chand, J.)*) NATHU MUHAMMAD, A.I.R. 1939 Lah. 395.

RIPARIAN RIGHTS—*Artificial channel—Right to flow of water.*

Any right to the flow of water from an artificial channel must be based on prescription. (*Baguley, J.*) AH LI v U SAN BAU, 1939 Rang. L.E. 551=

—*Natural stream—Upper riparian owner—Right to dam up stream.*

owner of a lower holding with as much water as he needs for his own purpose, it cannot be said that the amount that goes down is materially diminished. If, therefore

A.I.R. 1939 All. 280.

RESERVE BANK RULES, F.

under—Scope

When a servant who is entitled to R. 22 (iii) of the Reserve Bank Inquiry it must not be wholly illusory. If he submits an explanation with regard to the charges made against him the bank cannot take any action till they are satisfied that a charge (or charges) is proved; it is not enough that it is merely made. The framing of charge an enquiry and if it is proved, they must be that the act or omission which forms the basis

answer charges in person but puts in a written statement, does not absolve the employer from paying regard to the elementary rules of justice and fairplay. Since a right

employee evidence *Roberts, C.* INDIA v Rang 357

REVENUE COURT MANUAL (All India)

13—*Service not personally effected—Pro*

Rules 11 and 13 on page 9 of the Manual require the attestation of two service is not personally effected. When the procedure prescribed by the rules has not been followed, the service is defective. (*Marsh, S. M. and Mehta, J. M.*)

SALE

the owner of the upper holding puts a bund across the river so as to block the water course entirely but cuts a bypass just above the bund so that when the water banked up by the bund rises to a certain level the surplus water flows down that bypass and rejoins the bed of the main stream just below the holding of the lower owner, the restraint the former unless he has suffer, from the effect of the
AH LI v. U SAN BAU

SALE—Sham transaction—Te

The passing of consideration and the relationship between the parties are very important matters in arriving at a conclusion as to whether a sale is or is not a sham transaction (*Tek Chand and Abdul Rachid, JJ*)
BASANT KAUR v. RAM SINGH

A I R

SALE OF GOODS ACT (III OF 1

"Movable property"—Decree—Sale

orally and it is not necessary that a decree should be valid should C. P. Code can only be for the requirement of a transfer requirement of procedure. It is not a substantive enactment which says that unless there is an assignment in writing of a decree, a transfer, though made, shall be inoperative or void (*Blackwell, J.*)

Teeth—If a contract for sale of goods

Where a contract is for a chattel to be made and delivered, it is clearly a contract for the sale of goods. A contract to make and deliver a set of false teeth is therefore contract of the sale
(Gruer, J.)

S 16 (1)—Nature of condition implied in—Right of purchaser to reject

According to S 16 (1) there is an implied condition that the goods are of such quality and fitness for the purpose for which they are sold as the goods of the same kind and description would be expected to be.
(Gruer, J.)

Ss to buyer.

According to the principle underlying Ss 18 and 19 of the Sale of Goods Act the property in the goods does not pass to the purchaser until he exercises an option and selects the article. Consequently where it was left to the purchaser to choose one of the two tins of 'Rung' the sale would not be complete until he had exercised his choice.
Ranjit

3 (Civ)

SALE OF GOODS ACT (1930), S. 55.

There is no reason to assume that goods entrusted to a broker are goods to be sold on approval, rather than goods to be shown for approval. By delivery of goods to a broker even on *jangad terms*, no property can pass to him under S. 24 of the Sale of Goods Act. Goods or property entrusted to a broker, the buyer, the same and the cases are decided under S. 24 approval of the sale, the title of the purchaser is protected under S 27, provided there is no want of good faith. On a comparison of the words of Ss 24 and 27 of the Act, it is clear that a mercantile agent who receives goods on *jangad* acquires

S 21 PROVISIO—Applicability—Mercantile agent—Broker—Delivery of goods to buyer for purpose of

Where the owner of certain diamonds gives them to a broker to be shown to intending purchasers for approval only it cannot be held that the broker is a mercantile agent within the meaning of the Sale of Goods Act having authority to sell (*Kania J*)
ILR. (1939) Bom 454 = A I R 1939 Bom 435

S 27 of the Sale of Goods Act, which deals with the

known rule that a person who does not have the consent of the owner to sell the goods of a mercantile agent in possession of the goods, if that is not

shown, the words of the proviso to S 27 will not apply even apart from the question of good faith and notice.
(Kania, J.) AMRITLAL v. BHAGWANDAS
ILR. (1939) Bom 454 = 41 Bom L R 609 = A I R 1939 Bom 435.

S 55 (1) and (2)—Sale and agreement of sale—Distinction—Test—Passing of property in goods—Intention of parties—Duty of Court to ascertain—Buyer's refusal to pay price—Remedy of seller.

In considering whether the terms of a transaction constitute an outright sale or a mere agreement to sell, the court must ascertain when it was that the property in the goods was to be transferred. It is that from the time

SALE OF GOODS ACT (1930), S 56

when they were entered into the seller could not have dealt with the property, and had he attempted to do so the buyer could clearly have restrained him by injunction immediately and when further the buyer was to be at liberty to deal with the property and to take steps to realise it, the intention of the parties must be held to be that the property in the goods should pass from the seller to the buyer forthwith. The fact that the buyer is given some time for paying the money fixed as the sale price can in such cases be taken only as an option given to the buyer and to amount to the seller agreeing to give credit to the buyer for that period of time. If in such a case, the buyer wrongfully refuses to pay the price, the

SEA CUSTOMS ACT (1878), S 188

the property had been what it was represented to be. (*Thomas, C.*)
v. A H PA

SALE OF SALVAGE—*Principle of—Applicability—Conditions—Trespasser wrongly in possession of property—Mortgage of for payment of Government revenue—True owner subsequently establishing title and getting possession—Suit by mortgagee against mortgagor and true owner to enforce mortgage—Right to mortgage decree or personal decree against true owner.*

There is an equity only in favour of a person who is

own tenant to preserve the estate in order to protect his claim. The equitable principle of salvage can have no application in favour of a person who has never been in possession of an estate under any claim whatsoever and who is no more than a mere volunteer or a mere lender. A person lending money to a trespasser for paying Government revenue of the estate of which the latter is wrongfully in possession and taking a mortgage from the

v. B R 621=1811 O. 591=11 R.P. 611=
A.I.R. 1939 Pat. 559

SALVAGE LIEN—*Applicability—Debt incurred by receiver appointed by Court—Priority over mortgages created prior to such appointment—Rule—Powers of Court. See RECEIVER—BORROWINGS BY*

18 Pat 279.

SANAD—*Significance of—Settlement with a member of joint Hindu family—Property of self-acquired property—Holder if a trustee—Acceptance of guzara by other members—Effect.*

Where a settlement is made and sanad granted to a member of a joint Hindu family of property in which other members had an interest, it is not intended to ensure for the rights of the waqf granted for the use of joint acquired property the grantee holds acceptance of *guzara* of any trust that f.) JADUNATH 178 I C 950= 11 R O. 127= 1. 1939 Oudh 17. (XIV OF 1874).

apply to territo-

ries outside British India. (A.M.M. J.C. and Mr. Atmal, J.) WALI SHAH v. HASHAM KHAN. 1939 F. 10=10 R Pesh. 10=A I.R. 1939 Pesh. 25 ACT VIII OF (1878), S. n of goods—Remedy of

Presumption

Buyer agreed to purchase from seller 200 shares in Heinze Tin, Limited, but he broke the contract and refused to purchase the same in spite of seller's notices last of which was dated 29th June, 1937, when the market had fallen considerably. The shares however were not re-sold until 6th September, 1937, as the sellers did not give instructions to their brokers to sell them and no

—S 56 (2)—“Impossible”—*Meaning of—Sale of decree—Seller to cease to have right to execute decree—Buyer given liberty to realise decree as he liked at any moment—Judgment debtor becoming insolvent before payment of price and execution of deed of assignment—Effect.*

In the case of a sale of a decree in which the seller is not to have any right to proceed to execute the decree from the time of the transaction, and the buyer is given the liberty to take steps to realise the decree at his cost

damages.

In respect of a claim for a breach of warranty under

SEA CUSTOMS ACT (1878) S 191

The sole remedy open to those who are aggrieved by a decision or order for confiscation of goods passed by an Officer of Customs under the Sea Customs Act is the appeal to the Chief Customs Authority provided by S 188. The order is not liable to be challenged or impugned by any suit. (*Panchridge J*)

SECRETARY OF STATE FOR INDIA II

1 L R (1939) 1 Cal 257 =

A L F

—S 191—Orders under—If car
civil Courts

Orders passed by the Governor General in Council under S 191 of the Sea Customs Act can in no case be

A I R 1939 Cal 763

SECOND APPEALS See C P CODE S 100

SECURITIES ACT (X OF 1920) S 5—Govern

VINCE OF BENGAL

1 L R (1939) 2 Cal 52 =

A I R 1939 Cal 746

SETTLEMENT RECORDS See REVENUE RECORDS—SETTLEMENT RECORDS

SHIPPING—Bill of lading—Meaning—Effect of—Transfer of bill of lading—Effect of

A bill of lading is a document of title shipowner or by the master or other agent owner which states that certain specified goods have been delivered to and received by the ship. The bill of lading is a symbol of the right of property in the goods specified therein. Its possession is equivalent to the possession

goods. These attributes however attach bill of lading and not to a false bill of shipped and not to goods intended to be that an essential condition of the operation of a bill of lading as a document of title and as a symbol of the goods is that the goods are on board as the bills of lading certify. It is essential for the purpose of commerce that a necessary condition of the operation of a bill of lading as a document of board the ship of the goods which cover, and which it is so decided. (*Davis, J C and Tyabji J*)

CO-OPERATIVE CENTRAL BANK OF INDIA LTD

184 I O 226 = 12 R S 96 =

1 L R (1939) Kar 439 = A I R 1939 Sind 225

SIND COURTS ACT (XII OF 1866) S 8—

Appellate—Appeal—Forum—Administration—Sut—Sut valued for court fee below Rs 5000 Order by First Class Subordinate Judge re-writing plaint for presentation to proper Court—Appeal to High Court—Competency—District Court's jurisdiction to entertain

See BOMBAY CIVIL COURTS ACT S 26

A I R 1939 Sind 305

SIND ENCUMBERED ESTATES ACT (1896)

S 10

SIND ENCUMBERED ESTATES ACT (XX OF 1896)—Scheme of the Act—Discretion of manager of estate

The scheme of the Sind Encumbered Estates Act does

—Ss 8 10 and 12—Manager's power of management—Property known in revenue records as belonging

—Third person dis

tion—Property—If

gement of manager

o property made by

oust the manager's

power of management under 10 Under S 8 the order of management extends *inter alia* to all the immovable property including any interest in joint immovable property of which the debtor is possessed or necessarily implies

ys and some decl

property does not

claim the identity of

re in the lands is

shown as the property of the Zamindar in the record of rights published by the manager under S 12 the manager can rely upon the presumption raised by S 135 J of the Land Revenue Code and the share can

—S 9 (2)—Scope—Suit to compel manager to recognise transferee or assignee of admitted claim—If barred

The claims against the estate are debts and the need only with such debts and reprie

A debt is not the less a debt because ermined by the manager. The Act does

to a third party

be credited for nor

recognize the

But a suit to

transferee or

in reality one in respect of

within the prohibition con

is J C and Weston J)

CER SIND ENCUMBERED

179 I C 956 = 11 R S 166 =

A I R 1939 Sind 36

—S 10—Manager's power to arrest—Conditions

Under S 10 the manager has power to arrest during

is incumbent

to exercise the

mention in his

he passes his

order and the survey numbers in respect of which he proposes to recover by his power of arrest claims due (*Davis J C and Weston J*) SHERKHAN V EMPEROR

182 I C 963 = 40 Cr L J 710 = 12 R S 37 =

A I R 1939 Sind 155

—S 10—Scope of—Effect of Repealing Act of 1938 and General Clauses Act

The general principle embodied in S 4 of Repealing Act of 1938 and in S 6 A General Clauses Act, 1897, is that textual alterations remained fixed in the parent

Act after the Amending Act came into force though the

SIND ENCUMBERED ESTATES ACT (1896), S. 29.

Amending Act be subsequently repealed. Therefore S. 10, Sind Encumbered Estates Act even now relates to "rents profits and other sums in respect of the property under management" as amended by the Repealing Act II of 1906 though that Act itself was afterwards

—S 29—Scope—Mortgage decree obtained against zamindar—Execution—Judgment-debtor dying—Legal representative—Objection that decree is no longer executable against mortgaged property—Competency.

LAND.

SLANDER. See TORT—DEFAMATION.
SOCIETIES REGISTRATION ACT (XXI OF 1860), S. 20—Society or association formed for managing mosque—Association having for its objects, raising subscriptions for mosque, paying salaries and expenses for upkeep of mosque and improving education and rendering help to poor—If can be termed under Act—Right to act as mutawwal mosque.

A society or association having among its objects the conduct of the affairs of a mosque by collecting subscrip

under the Societies Registration Act. A religious society would also be a charitable society if it should be for the benefit of formed for certain purposes charitable, the fact that be strictly charitable, society any the less is one intended to portion of the public education and the r

under the Act and its registration thereunder is perfectly legal and valid. There is nothing in Mahomedan Law to prevent such an incorporated society from performing the functions of a mutawalli of a mosque. If such a society holds the office of mutawalli and is in management of the mosque as such in derogation of the right of a person claiming to be mutawalli, for over 12 years,

SPECIFIC RELIEF ACT (1877), S. 9.

it acquires that right by prescription (*Wadhwanth and Venkataramana Rao, JJ*) **MAHOMED HUSSAIN SAHEB v. THE AJIDAY MAHMOOD JAMALI.**

50 L W 734.
SOLICITOR—Lien of. See **LEGAL PRACTITIONER—SOLICITOR** 41 Bom L R 1091.

SOLICITOR AND CLIENT—Agreement for reduced fee See **LEGAL PRACTITIONER—SOLICITOR.** 41 Bom L R 410.

SPECIAL MARRIAGE ACT (III OF 1872), S. 2—Marriage under Act—When permissible—Suit to declare marriage void—If need be brought in High Court in its matrimonial jurisdiction

43 C W N 215—A I R, 1939 Cal 544.
SPECIFIC PERFORMANCE—Readiness and willingness—Onus—Discharge of.

After a bargain of sale has been repudiated by the

MOHAN v. CHANDRA BHAGARAI
182 I C 12—11 B N 502=1939 N L J 315—
A I R. 1939 Nag. 173.

—Suit for—Alternative prayer for refund of amount paid—Withdrawal of claim for specific performance—Damages, if could be awarded—Decree for refund with interest—When proper.

The plaintiff sued for the specific performance of a

rights of
ayed for a
considera-
during the
demand for
that
it was
the perfor-

of claim under.
In a suit under S. 9, Specific Relief Act, 1877, damages cannot be combined with a claim for specific performance nor can the defendant be allowed to plead that he has a claim. Where, therefore, the plaintiff claims specific performance and the defendant was allowed to plead that he has a claim for damages, the case was tried in the ordinary manner.

SPECIFIC RELIEF ACT (1877), S 11.

by S 8 of the Specific Relief Act and not in a summary manner as required by S 9, and there was an appeal and a second appeal.

Held, that it was not a claim under S 9, Specific Relief Act 11 I C 38 and 29 I C 210, Foll (*Ranjitmal and Sukhdonarain, JJ*) RHOF
v MADHOSINGH 1939 Mar L R 2 4

S 11—Control—Construction

Under S 11 of the Specific Relief Act a person cannot be said to be in control of movable property if he can only obtain possession of it with the sanction of a Court of law. The word 'control' in this means control exercised when the property in question is in the physical possession of an agent or bailee who is reasonably certain to carry out the directions of the principal or bailor (*Panckridge, J*) LAL CHAND v HARI CHAND 43 O W N 903

Ss 12 and 19—Contract to sell land—Default by vendee—Vendee leasing property to raise money for suit for enforcement—If destroys right to specific performance—Claim to damages—Sustainability as an independent claim

A agreed to sell a piece of land to B for Rs 9,000. He received Rs 100 by way of advance and it was agreed that the balance was to be paid within a month and the transaction completed. As the sale price was largely to be utilised for the payment of the debts of A, it was agreed that the balance remaining after the payment of the debts should be paid to the vendor before the Sub Registrar at the time of registration of the deed. As a lease of the properties was then outstanding, possession was to be delivered to the vendee only after the expiry of that lease. As the sale was not completed for nearly a year, the vendor A, arranged to file a suit for specific performance, and for that purpose raised a sum of Rs 1,000 by a *munigutta* lease under which the transferee was to be in possession for 12 years to get the advance of Rs 1,000 liquidated. B pleaded that by reason of this from carry must fail gave up his had raised deed of rele the crops during that season. A also claimed damages from B but B pleaded S 19 of the Specific Relief Act in bar of that claim.

damages is not sustainable as an independent claim (*Varad*)

v SREE

S
by vendee—Suit for specific performance—damages—Sustainability—Claim on the breach and acceptance of breach and claim in native—Distinction See SPECIFIC RELIEF ACT AND 19 (1939) 1 M L J 436

S 22—Act which defendant is not in position to perform—Specific performance—If can be decreed

SPECIFIC RELIEF ACT (1877), S 39

The Court will not decree specific performance of an act which the defendant is not in a position to perform (*Panckridge, J*) LAL CHAND v HARI CHAND 43 O W N 903

of immovable property is purely of a personal character and as no personal liability can be imposed on the minor, it follows that the minor cannot be compelled to perform such a contract. The purchaser cannot claim compensation from the minor for the breach of the contract. If that is so, S 25 A of the Specific Relief Act debars the purchaser from claiming the relief of specific performance against the minor (*Niyogi, J*) KRISHNA CHANDA SHARMA v RISHABA KUMAR 1939 N L J 324 = A L R 1939 Nag 265

S 31—Mortgagor in satisfaction of mortgage debt selling mortgaged property to mortgagee—Certain property misdescribed in deed by error—Judgment-creditor of mortgagor subsequently purchasing property in execution—Mortgagee's right to rectification of deed

As a Court purchaser is bound by estoppels which affect his judgment debtor, all the more must he be bound by an obligation binding the judgment debtor to make a valid conveyance of property which the judgment-debtor has admittedly intended to convey but has not so conveyed in law by error. Hence where a mortgagor in satisfaction of the mortgage debt has conveyed by a registered deed of sale the mortgaged property to the mortgagee but certain property is misdescribed by error in the deed the mortgagee is entitled to a decree for rectification of the deed as against the judgment-

Ss 39 and 42—Applicability and scope—Mortgage deed—Suit to declare forgery and of no legal effect

where a plaintiff brings a suit to a declaration that a certain mortgage purported to have been executed by him is of no legal effect and that the defendants are entitled to the rights under the

relief of injunction asked for is not a very appropriate or satisfactory relief, and it is unnecessary to grant the plaintiff an injunction

SPECIFIC RELIEF ACT (1877), S. 41.

Quære.—Whether the declaration in the suit can properly be brought under S. 42, Specific Relief Act. (HARRIS, C.J. and JUDGES, D. J. A. and J. B. J.)

minor to ignore—Liability to restore benefit. See MAHOMEDAN LAW—MINOR. (1939) 2 M.L.J. 463.

—S. 41—Cancellation of deed of sale executed by minor—Misrepresentation as to age—Order for refund of consideration—Discretion of Court.

order the refund of the consideration by the minor to the transferee although the minor had made a false representation as to his age at the time of the transaction.

by reversioner of mortgagor to declare right to redeem mortgage—Consequential relief—If necessary

Where the reversioner of a mortgagor seeks a declaration

character—Opposition to the performance of a ceremony—Legal status of person desiring to perform it, if involved—S. 42, if applies.

S. 42 of the Specific Relief Act, grants relief only in cases where the legal character or right as to any property of the plaintiff is denied by the defendants. A

collusive and to declare that latter creditor had no right to attach the property—Maintainability—Injunction—Grant of—Conditions.

It is open to a judgment creditor to file a suit to restrain another creditor from seeking to enforce the latter's judgment against the property which the former creditor is attaching or has attached. The Court, it is true, never grants an injunction unless there is some evidence that the plaintiff's right is in danger or is threatened. There is no doubt that if a plaintiff were

Y. D. 1939—67

SPECIFIC RELIEF ACT (1877), S. 42.

seeking to restrain a defendant from sharing in the benefit of attachment of property which has not been sold, it would be necessary to show that the defendant

nature is furnished, it is wrong to hold that such a suit for injunction is premature. The plaintiff filed a suit against one R to recover a sum of Rs 2,700 odd due to him on promissory note and got an order for attachment of R's property before judgment. Sometime later the defendant filed a suit to set aside the attachment.

decree obtained by the defendant against R was fraudulent and collusive and that the defendant was not entitled to attach the property which the plaintiff had

lie under S. 42 of the Specific Relief Act, which grants relief only in cases where the legal character or right as to any property of the plaintiff is denied by the defendants. A suit for injunction to restrain the defendant from attaching the property, which injunction would be based on a declaration that the defendant's decree was fraudulent and collusive, is maintainable.

colluding defendant. (DAVIS, J.C. and WESTON, J.) GHANSHAMDAS v. MANAGER, SIND ENCUMBERED ESTATES. 179 I.C. 956—11 R.S. 166—A.I.R. 1939 Sind 36.

—S. 42—Scope—Suit for declaration of right of

nary stage to anticipate, what the findings of fact in the suit are likely to be or to pass an order calling on the plaintiff to amend his plaint. (HARRIS, C.J. and ROWLAND, J.) RAJA BRAJA SUNDER DEB v. MANI BEHARA. 5 Cal.L.T. 35.

—S. 42—Scope—Suit for declaration that plaintiff and defendants as heirs of deceased were entitled to shares in moneys lying to credit of deceased in hands of Provident Trust not party to suit for restraining defendants from receiving

SPECIFIC RELIEF ACT (1877), S 42

ability—Amendment of plaint by addition of prayer for

of the estate of the deceased

Held, that S 42 was no bar. The suit property was in the possession of a third party therefore a suit for a declaration and injunction would lie. It was not necessary for the plaintiff to ask for possession or partition.

Held further, that the amendment of the plaint did not change the nature of the suit at all. What it in effect did was to express the real purpose and nature of the suit, for the suit was in reality a suit for the administration of the estate of the deceased (*Davis J C and Tyabji, J*) MT LATIFANBAI v MT SAKINABAI LLB (1939) Kar 432=181 IC 770=11 E S 240=A I R 1939 Sind 107

—Ss 42 and 39—*Suit by creditor*
ration that transfer by judgment debtor
Maintainability—Right of creditor to
tion of deed of transfer

It is essential to bear in mind the distinction of a substantive right and a right which

and therefore cannot give rise to a right of suit under S 42. Hence a creditor cannot sue under S 42 for a bare

12 E R 113=A I R 1939 Rang 332 (F R.)

—S 42—*Suit for declaration and injunction—*

SPECIFIC RELIEF ACT (1877) S 45

Court to prevent the other joint owner from interfering
—*Joint tenancy*
—*possession* The
Specific Relief Act
The real diffi-
42 is in the
plaintiff being
use only means
the Court and
make a demand

—S 42—*Suit for mere declaration of right to execute decree as assignee—Maintainability* See T P. ACT S 3 43 O W N 953

—S 42 Proviso—*Applicability—Property in custodia legis—Possession neither with plaintiff nor defendant—Suit for bare declaration of title—Competency*

Before the proviso to S 42 of the Specific Relief Act can come into operation, it must be shown that the defendant was in possession of the property in respect of which the declaration is sought, and that as against him the plaintiff could obtain an order for delivery of possession. If at the time the suit is filed, possession of the property is neither with the plaintiff nor with the

—S 45—*Scope—If controlled by S 33 of Bom- bay City Municipal Act—Election—Results not declared* Competency See BOMBAY 41 Bom L R 911

—*Right to franchise or per- vared under Bombay City voters according to com- to franchise or personal BOMBAY CITY MUNICI 41 Bom L R 911*

—S 45, Proviso (a)—*Personal right—Meaning of*

JALALI

—S 42—*Suit*
injunction—Suit,
meaning of

In the case of joint possession of all alleges that he is a

SPECIFIC RELIEF ACT (1877), S. 45

be exercised with caution, as the remedy is of a summary nature and coercive in character. Further S. 45 enables the Court to make an order requiring any specific act or acts to be done or forbore from being done, and nothing else. (*Wadia, J.*) SHANKARLAL

181

of

Court must—must respect statute—If can be restrained

Under proviso (b) to S. 45 the jurisdiction of the Court there is a clear breach of doing, as the cases may be by incumbent must be determined with reference to the provisions of the statute or regulation under which the act complained of should have been done or forbore. Where the doing of an act is incumbent upon a public officer by the clear terms of a statute, an applicant under S. 45 of the Specific Relief Act cannot ask for, nor can

STAMP ACT (1899), S. 2.

dant but has not followed it up by a suit for a temporary injunction, he is not entitled to specific relief by demolition, but only to pecuniary damages; especially when he has another perfectly good passage. (*Dalip Singh, J.*) DURGA DEVI v. DALIP SINGH.

41 P.L.R. 224 = A.I.R. 1939 Lah. 339.

—S. 51—Perpetual injunction—Grant of—Conditions precedent

These conditions precedent to the grant of a perpetual

—S. 55—Mandatory injunction—Demolition, when allowed.

In cases of mandatory injunctions for restoration of property to its original condition, demolition is the most exceptional remedy and it is the duty of the Court to weigh the amount of substantial mischief done to the

—S. 45, Proviso (c)—“Consonant to right and justice”—Meaning—Text to determine—Considerations.

An applicant under S. 45, Specific Relief Act, must show that the order he prays for is consonant to right

mal, J.) MAYACHAND v. UMA.

1939 Mar.L.R. 207 (Civ.).

—S. 55—Mandatory injunction—Grant of—Duty of Court

involved, or the delay on the part of the applicant in making the applications or to considerations which

unreasonable. (*Chandrasekhar, J.*) *See also* S. 55, S. 56.

1939 Mar.L.R. 150 (Civ.).

—S. 56—Defendant making encroachment on plaintiff's land—Mandatory injunction—If proper

STAMP ACT (1899), S. 2.

—S. 2 (10)—*Agreement to sell—Execution of sale deed in future contemplated—Delivery of possession—Instrument if a conveyance.*

Where the language of a document makes it clear that it was intended to be only an agreement to sell and that a proper deed of sale to complete the transaction was to be executed later on, the document does not amount to a conveyance under S. 2 (10) of the Stamp Act though possession also is delivered.

—S. 2 (22)—*'Promissory note'*

—S. 25, Expl., proviso—*Person having fractional interest in mortgage purchasing equity of redemption—Right to reduction in stamp*

A person having a fractional interest in a mortgage

under S. 25 (a); if they cannot do so, they must take the total sum to be the capitalised sum for 20 years. The period during which the lessee is to hold the estate or the period when the lease expires or can be determined either by a provision in the lease itself or otherwise in accordance with law, has nothing to do

STAMP ACT (1899), S. 35.

with the section and is not of much importance to the stamp authorities. What is aimed at is the ascertainment of the total amount payable when the document is presented. A lease of certain mines and quarries was granted in consideration of the payment of certain royalties. The maximum period for which the lessee was entitled to the mining rights under the lease was

on the total amount of rent payable for the whole

—S. 26—*Applicability and scope—Assignment of mortgage debt—Valuation of debt in deed of assignment*

here
any

—S. 35, Proviso (a)—*Scope of—If confers a general discretion as to admission of document.*

The words 'subject to all just exceptions' in proviso (a) to S. 35 of the Stamp Act, do not give any general discretion to the Court as to admission of a document, but mean those exceptions in which a document is rendered

STAMP ACT (1899), S. 36.

Inadmissible by the provisions of any other statute for

STAMP ACT (1899), Sch. I-A, Art. 30.

him under S. 29 of the Act should bear the expense and which
e fact
person
29 is
ormer
if the
HAND

suit or proceeding. Hence where a document is alleged to be insufficiently stamped unless S. 61 of the Stamp Act allows it the appellate or revisional Court cannot refuse to admit it in evidence to increase the stamp

—S. 56—*Decision of Collector—Revision—Duty of Financial Commissioner.*

—S. 36—*Application—*
strictly applied its mind as to admissibility.

The provisions of S. 36, Stamp Act, are mandatory

—(Burma) Sch. I, Art. 1—*Applicability—Test—*
acknowledgment of a

section to warrant the conclusion that the section has application only to cases in which the Court has admitted the document after the question of admissibility of the document in evidence has been decided judicially and this document in evidence cannot be set at naught or was not duly stamped. (*Iqbal Ahmad and Baigari, J.F.*)

M. K. LODHI v. ZIA UL-HAQ. 184 I.C. 687—
1939 A.W.R. (H.C.) 557—1939 A.L.J. 567—
A.I.R. 1939 All.

—S. 36—*Document admitted—Insufficiency of stamp—If can be raised in second appeal for the first time.*

Where no objection on the score of insufficiency of stamp was raised in the lower Courts with reference to a document, when once it has been admitted in evidence under S. 36 of the Stamp Act, the admission cannot be called in question at any stage of proceedings and as such the JAC

acknowledgment of a mischievous of Art. 1 of Sch. I, Burma Stamp Act, unless it was created in order

without any writing and then handed back to the plaintiff. The statement opened by bringing forward

due, but simply as one of a series of statements of account which, for the convenience of the parties, were exchanged at fixed intervals, and that, therefore, the signed statements of account did not require to be stamped under Art. 1 of Sch. I of the Burma Stamp Act, KARIM OMAR & CO. 939 Bang. L.R. 194—
L.R. 1939 Bang. 315.

) Sch. I A, Art. 30
—*Monthly lease for*
than one year—Stamp

Where a document which is not duly stamped is once admitted in evidence, S. 36 comes into play and thereafter the Court should proceed as though it were properly stamped; the letting in of document cannot be regarded as an imperfection in procedure which can be corrected in appeal. (*Stone, C.J. and Bose, J.*) RAM-CHANDRA KRISHNAJI v. ZOLBA BALAJI.

183 I.C. 509—12 E.N. 69—
1939 N.L.J. 341—A.I.R. 1939 Nag. 220.
—S. 40 (1) (b)—*Penalty and defect levied under—From whom to be recovered.*

S. 29 of the Stamp Act prescribes that in the absence of an agreement to the contrary, the expense of affixing the proper stamp shall be borne in the bond by the person drawing, making or executing it. Ordinarily, therefore, it would be reasonable to require a person who has failed to discharge the duty

duty

A lease for less than one year means a lease for some specified period which is less than 12 months. It does not follow that because a lease deed is a monthly tenancy under S. 106, T. P. Act, it is a lease for less than one year. A lease which is expressed to be a monthly one but which specifies no period of duration is clearly a lease for an indefinite term and must be stamped under Cl. (iii) of Art. 30 (a) Sch. I A of the Stamp Act as amended in Madras and not under Cl. (i) of Art. 30 (a). (*Leach, C.J., Wadsworth and*

STAMP ACT (1899), Sch. I, Art 35

—Sch I, Art 35 (a) (i) and (viii)—*Appl*
ibility—Lease on monthly rental—No term fixed
terminated on one month's notice

not
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will
 scribe was put down for the purpose of attesting the
 document (*Costello and Biswas JJ*) JNANADA
 GOVINDA CHAUDHURY v BIRENDRA NATH
 GOSWAMI. 69 O LJ 347 = A I R 1939 Cal 595

—S 99 (g)—*Applicability—Hindus*
 S 99 (g) is not applicable to wills executed by Hindus
 (*Panchridge, J*) GOBERDHONEDAS v PRAFULLA
 BALA DAS. A I R 1939 Cal 637

—S 119—Property bequeathed to sons
 after her death to vest in sons
 existence—Nature of interest
 CONSTRUCTION

—S 120 (1) and (2)—
Request of property to daughter—Condition that on her
death without issue property to devolve on another—
Latter predeceasing daughter—Subsequent death of

absolute owners with full rights And in case of her
 share which
 devolve upon

the testator R S predeceased S K
 The plaintiff claimed as a transferee;
 A S, while the defendants were tr.
 daughter, S K

Held (1) what the will provided
 case of S K dying without issue survi
 perty was to devolve upon R S, wil
 legacy in case a specified uncertain event happened and
 the case therefore fell under Cl (1) of S 120 of the
 Succession Act and not under S 120 (2) (2) that

ledge of the right to elect and of the circumstances
 which would influence an election A simultaneous
 approbation and reprobation cannot be an election
 either to approbate or to reprobate (*Wadsworth J*)
 SONIA BAI v CHELLAM 1939 M W N 280 =

—Ss 180 and 181—Scope—If cut down by
 Provident Funds Act, S 5 See PROVIDENT FUNDS
 ACT, S 5 1939 M W N 280

SUCCESSION ACT (1925), S 214.

—S 214—*Meaning of*
being heir—Right to sue for debt due to deceased's
estate
By virtue of S 211 of the Succession Act a holder of
letters of administration is legal representative of the
deceased person for all purposes, except in relation to
property of the deceased which has passed by survivor
ship He is, therefore competent to maintain a suit
for the recovery of a debt due to the deceased's estate
The mere fact that he is not an heir of the deceased

—S 214—*Scope and effect—Debt due to deceased*
Mahomedan—Suit to recover—Certificate—Necessity—
Production of certificate subsequent to filing of suit—

'S 214 of the Succession Act is a section which enables a plaintiff to produce a certificate under S 32 of the Administration Act or a certificate granted under the Succession Certificate Act of 1899 and having the debt specified therein The effect of S 214 is merely that the Court cannot pass a final decree in the

—S 214 (1) (a)—*Succession—Meaning of—*
Purpose of section

The word 'succession' in S 214 of the Succession

persons so entitled are not to be found in an interpretation of the word 'succession' but in the other provisions of the Succession Act itself or the other Acts referred to in S 214 under which the grants are made The purpose of S 214 is merely to make clear that no debt to a deceased person can be recovered through Court except by a holder of one of the documents specified, the only exceptions being either where the claim is made on survivorship or where it relates to rent, revenue or

SUCCESSION ACT (1925), S. 218.

profits payable in respect of land used for agricultural purposes. (*Mukherjee and Roxburgh, J.J.*) KISSEN-LAL KALPANI v. TILACHANDRA BOSE.

43 C.W.N. 1218.

—S. 218—Application for letters of administration—Applicant's case carrying suspicion—Duty of Court.

Where in an application for grant of letters of ad-

SUCCESSION ACT (1925), S. 299.

An application for revocation of a grant of letters of administration made in favour of opposite party, by a party who contested the order when it was made, which is in substance an application for review and falls under O. 47, R. 1, C. P. Code, when it is not accompanied by a copy of the order or a decree appealed from, is defective and is not maintainable. By S. 268, Succession

—S. 263—Grant of administration limited for representing deceased in suit—Application by executors of deceased's will for its revocation and for grant of probate—Practice.

J.J.) SUKUMAR BANERJI v. RAJESHWARI

182 I.C. 696=

I.L.R. (1938) 2 Cal. 507=A.I.R. 1939 Cal 231.

—S. 238—Part of will lost—Probate, if may be granted.

Probate may be granted if a part of a will is lost but the contents are proved. Where, therefore, all but a

executors. They did not appear and an Administrator *ad litem* was appointed. The executors then applied for a revocation of this grant of Letters of Administration and also for a grant of probate to them.

—S. 263—Application for revocation by person who contested grant—Grounds that can be urged

intact in accordance with the English practice. 7) MUHAMMAD GOLAN DAYE, In the goods 43 C.W.N. 1193=A.I.R. 1939 Cal 718.

—Ss. 276, 284, 286 and 295—Proceedings for

Succession Act by an affidavit, the meaning of has not entered

In the former case, the matter is *prima facie res judicata* (though the matter is not a final decision) and a caveat has no *locus standi* to appear and oppose an

since he had that opportunity, which he refused to utilize. The phrase "new ground" does not mean additional evidence on old grounds. It is meant to cover contingencies quite different in character from the mere discovery of evidence, which if it had been available

—S. 291—Surety for executor—Right to discharge from liability—Executor adjudged insolvent.

A surety for the due administration of an estate by an executor, is entitled to be discharged from his liability if the executor is adjudged insolvent. 43 E. 768.

erated upon by the Court new grounds, the only one to be attacked by a party at the time it was made and

—S. 291—Surety to administration bond—The

—Ss. 263 and 268—Application for revocation in substance an application for review—Procedure to be followed.

is passed by the Court in the ordinary course of the case under the Act. (*Stemp, J.*) SRI RAM v. EMPEROR. I.L.B. (1939) Lah. 421=41 P.L.B. 7

SUCCESSION ACT (1925), S 302.

—S 302—Scope—Jurisdiction of High Court under—Disputed questions of title and fact—Question whether deed of surrender by pardanashin Hindu

defined merely to the administration of the estate is competent to exercise it would be exercised to give a direct answer come before it was up by him can question whether

cannot alleges to be virtually a suit under S 302 of the Act.

Manohar Lal, J.—In a case where the parties are at variance as to the facts, the Court should not embark upon deciding questions of title and fact in such a complicated dispute which can only be settled to the

debts only including his own—Liability to answer claim of creditor not paid—Extent of.

extent to which an executor *de son tort* pays lawful or

—S 307—Executor—Powers of—Will authorising executor to carry on business and to pledge credit of business for that purpose—Power to charge general assets of the estate.

It is obviously improper for an executor to utilise the credit of the business for the purposes of carrying on a will left by a

for the purposes of the business to the general assets of the estate cannot be credit of the business unless there is an charge them for the purposes of the business. *J. and Patanjali Sastri, J.* DINSWAD DADABHAI v.

SUCCESSION ACT (1925), S 332.

MOHAMAD MOHAMMOOD

50 L.W. 550 =

1939 M.W.N. 1150 = A.I.R. 1939 Mad. 922.

—S 317—Accounts—Court's power to examine the proceedings under administration has every power to ratify the accounts particularly so when the Ss. 301 and 302 in it to do so in order

Held, that under S 317 of the Act an executor had statutory duties to perform and until he had done that he did not divest himself of the character of executor. Burden of proving whether he had done everything

accounts and dealing with it as if it were his own and his act in paying the money into his account could not be set aside on the ground that he was not to pay it over to the

—S 317—Filing of account by executor—Error

every case the S. 317 of the Act year Where one year from

for taking out probate—Creditor's right to charge against estate—Right of indemnity.

A creditor who advances money to an executor under a will for a necessary purpose, viz., for obtaining probate of the will, is not entitled to any charge against the estate, but in a proper case the creditor is entitled to stand in the shoes of the executrix for the purpose of recovering from the estate and to be given

—Necessity—Executor also ordinary legatee under

SUCCESSION ACT (1925), S. 373.

will—Executor paying out all outgoings—Mortgage of property bequeathed to himself as residuary legatee raising money for his own use—Inference of assent to legacy—Absence of probate—Effect.

It is well settled that where a legatee under a will mortgages an immovable property devised to him by the testator before obtaining the assent of the executor to the legacy, the property can form the subject-matter of a valid mortgage, and the mortgagee is entitled to cut off the equity of redemption. Although the legatee has no property in the legacy by the devise until the assent of the executor is obtained, he has an interest in it which is capable of being transferred. Whether the executor has assented to the legacy must be decided on the facts and circumstances of each case, proved that all the outgoings as provided in his will have been paid off, and that any of the specific legacies remains to be paid out.

date of the mortgage by him. The fact that no probate was ever obtained by the executor is no ground for holding that the assent given by him to himself as a residuary legatee is no assent in the eye of the law. The estate of the testator vests in the executor, if he accepts office, from the date of the testator's death, and he has

No decree can be passed in a case in which a succession certificate is required until a succession certificate has been produced, and it is the duty of the Courts to see which party is *prima facie* entitled to a certificate. There may be cases in which a Court has discretion to refuse a certificate altogether, for instance in a case where no party proves any *prima facie* claim to the

by Local Government.

It is a principle of construction of statutes that a

SUITS VALUATION ACT (1887), S. 11

J.) RAMA NAND v. PARKASHA NAND.
183 I.C. 657—12 R. Pesh. 15=
A I.R. 1939 Pesh. 80.

SUITS VALUATION ACT (VII OF 1887), S. 8—
Caste—Ex communicated member—Suit for declaration of illegality and impropriety of resolution of ex-communication and of plaintiff's right to enjoy caste property in common—Prayer for permanent injunction restraining caste from obstructing enjoyment of caste properties—Valuation—Jurisdiction of second class Subordinate Judge

Plaintiff who had been ex communicated from his caste by a resolution passed by the community sued for

against the defendants, restraining them from nt of the said properties rly 1,100 members of the owned by the caste The suit was instituted in the Court of a second class Subordinate Judge whose jurisdiction was limited to Rs. 5,000. It was contended that that Court had no jurisdiction as the value of the properties was over Rs. 5,000

Held, that if the relief of permanent injunction claimed by the plaintiff be regarded as a consequential

beyond the jurisdiction of the second class Subordinate Judge. (Lokur, J.) NATHJIBHAI v. SHANKARLAL
41 Bom.L.R. 425=A I.R. 1939 Bom. 287.

—S. 8—*Suit for declaration of right of fishery—Damages for trespass and injunction—Valuation.*

In a suit for a declaration as to a right of fishery, for damages for trespass and for an injunction against further trespass, the value of the suit for purposes of jurisdiction and for purposes of court fee must be the same, as provided by S. 8 of the Suits Valuation Act. (Harriet, C. J. and Rowland, J.) RAJA BRAJA DEB

—S. 11 (1) (b)—*'Prejudicial'—Trial by Court having no pecuniary jurisdiction.*

There is no prejudice within the meaning of S. 11 of the Suits Valuation Act merely by reason of a trial Court not having large enough jurisdiction.

TEA CONTROL ACT (1938), Sch., Cl. (1).

It would not operate to increase the export quota for any year subsequent to that in which it
(*Edgley, J.*) SUNDARPU TEA ESTATE
TEA LICENSING COMMITTEE

L.L.R. (1939) 2 Cal 210=18
70 C.L.J. 385=43 C.W.N. 761=
AIR 1939 Cal 508

Sch., Cl. (1)—"Investigation"—What amounts to

The use of the term "investigation" in Cl. (1) of the schedule to the Tea Control Act, in connection with the ascertainment of the crop basis of an estate suggests the necessity of careful scrutiny by the Committee of the statements furnished by an estate in support of its application for an export quota. Mere acceptance, without

the Committee had fixed the crop basis had been fixed after investigation. If the crop basis figure for a particular year was treated as the main basis of their calculation of the subsequent years during which the

TOET—Collisions at sea—Contributory negligence—

based on failure of plaintiff to fill up opening—Sur-

on 25-10-1933. The respondents instituted the present suit on 19-12-1934 for recovery of damages from the appellants for loss sustained as a result of the diversion of the water channel by the appellants, the respondents alleging that the opening effected by the appellants in 1928 continued even after the former suit

the opening would not exonerate the appellants from

TOET.

liability for the loss sustained by the respondents, and
arise, AKUR
72=
303.

—Damage—Irrigation authority—Construction of new works—Damages to lands of others—Liability for—Nature and extent of See IRRIGATION AUTHORITY—RIGHTS OF 49 L.W. 662.

—Damages—Representative suit for—Maintainability.

It is well established that a representative suit does not lie for damages in tort, though when a representative suit properly framed for other reliefs incidentally involves a claim for damages put forward by certain individuals such a claim may be permitted.

of State—Liability for loss of government servants—Hospital

away by some one else,

tort had been in the hospital Council could be maintained by the in maintaining at the expense as discharging

a proper function of Government within the principle enunciated in the case of the *P. & O. Steam Navigation*

Defamation—Abuse, when actionable.

Defamation—Abusive language—Proof of pecuniary loss—Necessity.

For a plaintiff to succeed in a suit for damages for defamation in respect of certain abusive language used by the defendant, it is not necessary for him to prove any pecuniary loss, provided he succeeds in proving that

TORT

—Defamation—Damages—Right to—Proof of pecuniary loss—If necessary

When on the face of them, the words used by the defendant reputation t
tial amount t
niary loss
special dama
J) BASTIR

1939 M L R 133 (Civ)

—Defamation—Practice—New plea of absolute privilege—If can be taken for the first
See PRACTICE—NEW PLEA

—Defamation—Privilege—Police
judicial proceeding—Statements made in
A witness whether or not be a party

taken as the criterion for determining as to what should be the extent of the privilege. Consequently, no action for damages for defamation will lie in respect of defamatory statements made by the defendant against plaintiff in his report to the Police or in respect of defamatory statements made in the criminal proceeding.

184 I C 637=12 E C 258=43 C W N 775=
A I R 1939 Cal 477

—False imprisonment—Getting another arrested by Police on false allegations—Liability for damages

—Highway authority—Liability for mere non-feasance

It is well settled that a highway authority is not liable for damages resulting from mere non-feasance (*Bennet and Verma JJ*) RAHIM BAKSH v MUNICIPAL BOARD OF BULANDSHAL 181 I C 174=
11 E A 554=1939 A W R (H C) 126=
1939 A L J 101=A I R 1939 All 213

—Malicious arrest—Suit for damages—Decree silent as to mode of execution—Decree holder proceeding against person of judgment debtor—Liability for damages

It is open to a litigant or a lawyer to take the view that where the decree is silent, as to the execution, he may reasonably attempt to

damages for malicious arrest. Although S Code, gives right to a party to claim compen

TORT

—Malicious prosecution—Absence of reasonable and probable cause—Proceedings under S 144, Cr P Code—Suit for damages.

show this it is necessary not merely to point to the eventual failure of the defendants to establish the civil

—Facts to be

s prosecution,
responsibility
utions against
s convicted in

the first Court was in appeal ultimately acquitted the plaintiff, in order to succeed in his suit, has still to establish that the defendant acted without reasonable and

—Malicious prosecution—Application to prosecute under S 211, I P Code—Enquiry under S 476 Cr P Code, therefor—Appearance before Magistrate—Proceedings if amount to prosecution

Where as a result of an application by a person to 1 I P Code, an enquiry is 476, Cr P Code, in respect that other person and he did appear before the Magistrate and the Magistrate ultimately refused to make a criminal complaint, the proceedings amount to prosecution within the meaning of 'damages for malicious prosecution' (*Bennet and Ganga Nath, JJ*) DHARAM NATH v MAHOMED UMAR KHAN I L R (1939) All 424=
184 I C 247=12 E A 205=1939 A L J 367=
1939 A Cr O 77=1939 A W R (H C) 299=
A I R 1939 All 554

—Malicious prosecution—Institution of proceedings under S 144, Cr P Code—If can give rise to action for damages for malicious prosecution—Essentials to be proved

order under S 144 of Cr P Code. There must, in order to for malicious prosecution, the defendants moved

TORT.

—Malicious prosecution—Meaning—Petition to Magistrate alleging suppression by plaintiff of finding

the finding of the articles found and of the disposal of the same were given and the defendant also offered to produce evidence. The defendant also gave a sworn statement and as a result a charge was framed against the plaintiff under S 20 of the Treasure Trove Act. The proceed-

TORT.

An extraneous structure brought on to a highway must be maintained in good repair by the authority

do or doing something which a prudent and reasonable man would not do. The ordinary prudent and reasonable man is not required to drive on the assumption that he will meet with improper obstructions on the highway. Merely because the ordinary man knows that at

TRADE MARK—PASSING OFF.
—Damages for—Mode of assess.

injury and consequential damages, it is not possible to form an estimate on anything like

Madhavan Nair, J) GOVINDAPAJA PILLAI v.

by a person against whom proceedings under the Legal

—Suit for damages—Limitation. See LIMITATION ACT, ART. 36. AIR 1939 Lah. 118.

—Wrongful attachment—Application for compen-

—Wrongful inducement—Breach of contract—Inducement of—Liability for damages—Conditions—

—Negligence—Corporation omitting to maintain in good repair extraneous structure brought on to highway—Liability for damages.

defendant to leave their service and sign a contract to appear in a picture for the defendant. In a suit for damages,

TRADE MARK

Held, (1) that the defendant did not commit any actionable wrong towards the plaintiffs in as much as the contract which the actress purported to enter with the plaintiffs was void and not binding upon her by reason of her minority, and in leaving the plaintiffs therefore, she committed no wrong, (2) that the defendant did not employ any means which were in themselves illegal in enticing her away from the plaintiffs' service as it was not illegal to persuade or to offer a

TRADE MARK

import milk bearing the label resembling those used by them sued the defendant and applied for an interim injunction

Held, that the close similarity in the sound between the words 'ideal' and 'cordial', and similarity of labels were intended for the purpose of getting the customers to mistake one brand for the other, and the application for interim injunction ought to be granted (*Mc Nair, J.*) NESTLE AND ANGLO SWISS CONDENSED MILK A I R 1939 Cal 466

Colourable imitation—What

183 IC 625=12 RR 87=A I R 1939 Rang

TRADE MARK—Abandonment—Proof—Length of time—If necessary

No particular length of time is necessary for abandonment. If a trade drops out of the use of a plaintiff and another gains the reputation in the trade for goods made under the particular name and his name is associated with the mark and the mark associated name, so that all who deal in the goods do when they see the mark they see the goods plaintiff, then the original position of the competitor using the same mark has practically disappeared (*Baguley and Motely JJ*) KHARWAR v MOTIWALA 1939 Rang L R 18=181 IC 792=12 RR 489=A I R 1939 Rang 98

Acquiescence—What amounts to

181 IC 792=12 R

Infringement—

to profits made by innocent infringer—Offer to pay profits made by sale—Plaintiff unable to prove damage—Right to enquiry or account of profits

porting grey sheetings, sued the defendants, for sale of nine marks was standing (name of the firm), sole importers for Burma Made in India "The defendant's mark complained of consisted of nine ed in a similar weba Ko Gaung for, mongoose), the mark not being written in words but having the Burmese figure nine written in an extremely snake-like fashion Below were the words "A A M M. Ltd R. (name of the firm) Made in India The mongooses were made to look as much like snakes as possible. The mongoose is an uncommon animal in Burma and its Burmese name "Mweba" was not generally known he plaintiff had been doing much earlier than the defendant had acquired a reputation in its brand city clear that the highly colourable imitation of abundantly appearing the design of the Burmese equivalent "Mweba with the plaintiff's snake or Mwe" (*Baguley and Motely, JJ*) KHARWAR v MOTIWALA 1939 Rang L R 18=181 IC 792=12 RR 489=98

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There was some similarity in the get up of the labels of milk sold by the plaintiffs and the defendants firm though the colouring was slightly different. The defendant firm copied the directions on the containers of the plaintiffs word for word except that they omitted some paragraphs and the words in each case in which the milk was recommended were again identical except that the word 'cordial' was used for the word 'ideal' and there was no explanation given why the word 'cordial' had been used. The plaintiffs after repeatedly demanding in vain an undertaking from the defendants not to

SWADESHI MILLS CO. LTD. 181 IC 17=11 RR 325=41 Bom LR 182=A I R 1939 Bom 118.

Infringement—What amounts to—Burden of proof—Right to injunction—Right of damages—Sufficiency

Any mark or symbol, whatever the original object of it may have been, may come by use to be recognised in the trade as the mark of the goods of a particular person, and if so no other trader has a right to stamp it on his goods of a similar description. The principle is

TRADE MARK.

well settled that if a man by a long course of trading

ent and inferior class. It is not necessary to prove actual deception, only that the act of the defendant is calculated to deceive; and where the imitator of a trade mark the burden of imitator. It is sufficient if the plaintiff defendant has put into the hands of ar

AND MANI
MILLS CO.

—Pass

Proof that

—Right to—How acquired
eriptive mark—Difference between

A trader acquires a right of p
mark merely by using it upon or i

goods of a particular person as for instance in the cases of "Life Buoy" soap, "Wincarnis," or "Three Nuns" tobacco. If the mark be a distinctive one, the trader who adopts it is entitled to protection directly the article having assumed a vendible character is launched upon the market. As desirous of adop

—Right to—Importer selling goods with registered
trade mark—Right to protection as against manufac-
turer.

TRADE UNIONS ACT (1926). S. 18

Where goods imported have been sold by the im-

A.I.R. 1939 Rang 381.
—Trade name—Infringement—Passing off action

re case that he is
other person. The
has any right to
business of another

ne. —Trade name—Infringement—Similarity in
names—Sufficiency—Right to injunction—Conditions.
In an action by a company to restrain another
company by an injunction from carrying on business

to the defendant company or to cause confusion
the two companies. The plaintiff company
on business under the name "the Asiatic
ent Society Life Assurance Company,
" The defendant company began to trade
in name, "The New Asiatic Life Assurance
Company, Limited."

Held, that the defendants' name was not likely to
mislead the public or cause confusion so as to justify
the grant of an injunction. (Meekett, J.) ASIATIC
GOVERNMENT SOCIETY LIFE ASSURANCE CO., LTD.

TRADE UNIONS ACT (XVI OF 1926), S. 18—
Scope.

S. 18 does not afford immunity to a trade uni
an officer thereof for an act of deliberate
(Lobo, J.) DALMIA CEMENT, LTD. v. N
185 I.C. 57—A.I.E

T. P. ACT (1882), S. 6

or a sale deed, in favour of his daughter, transferring all his properties to her for a sum of Rs 10,000. The daughter executed another document at the same time, by which she undertook to make a fixed monthly cash payment amounting in all to Rs 400 per annum to her father so long as he lived.

Held, that the obligation of the daughter to maintain her father, arising under the Mahomedan Law, arose in this case, and she was bound under her personal law to pay Rs. 400 by way of maintenance to her father, and the amount came within the mischief of S 6 (*dd*), T. P. Act. (*Wort, f*) BIBI HALIMAN v BIBI UMADAT-UN NISSA. 181 I.C. 37=5 B.R. 520=

11 E.P. 567=A.I.R. 1939 Pat. 506

—S 6 (e)—Bar under—Scope of.

Though a right to sue for damages is a mere right to

T. P. ACT (1882), S. 11.

—S. 8—Applicability—Endorsement of promissory note—If operates as transfer of debt. See NEGOTIABLE INSTRUMENTS ACT, S. 50

1939 M.W.N. 774

—S 8—Applicability—Endorsement of promissory note by a coparcener—Right of endorsee against other members See NEGOTIABLE INSTRUMENTS ACT, S 50

1939 M.W.N. 774

—Ss 10 and 126—Gift—Power to revoke on alienation—If a condition restraining alienation—Ss 10 and 126, if reconcilable.

Where by a deed of gift the donor removes himself from proprietary possession of property and puts the donee in possession, he confers full proprietary title upon the donee in respect of the property transferred. Where the donor reserves to himself and his heirs the power to revoke the gift in case of alienation by the

ex minor of property already sold by guardian—No suit by minor within three years of his attaining

property and
ars of his be
later on merely
transfers the property to a third person, it is not a
transfer of an actionable claim, and it could not be a

could not be contended to be an absolute exception to
S 10. (*Thom, C. J and Ganga Nath, f*) BRIJ DEVI

—S. 10—Scope—Hindu family—Partition between

profits had become due and had been ascertained, but the attachment under which it was sold was at a time when the profits had neither become due nor ascertained what the purchaser bought was only a mere right to sue and his suit for share of profits is not maintainable. The subject-matter of sale in a judicial sale following upon an attachment, is of necessity the subject-matter of the attachment. (*Stone, C. J and Clarke, f.*) JAGANNATH v. JAMMA VALLABH. 181 I.C. 533=11 B.N. 470=

1939 N.L.J. 1=A.I.R. Nag. 07.

Y. D. 1939-69

181 I.C. 533=11 B.N. 470=11 B.N. 470=

50 L.W. 254=A.I.R. 1939 Mad 769=

(1939) 2 M.L.J. 345 (F.B.).

—S 11—Settlement deed—Construction of words implying full ownership—Conferment with power to enjoy with all rights—Subseq limiting absolute estate—Effect of—

tion
While the Court construing a document the entire instrument in order to

T P ACT (1882), S 11

the examination must be carried out in the T P Act, when the instrument is one transferring immovable property. The examination shows that if a mortgage has been created, it is an absolute interest, those words must be given effect to, without standing, that later words are used which restrict the right of full enjoyment. A well-considered, affecting the full enjoyment of the property, the examination of the will, that was given effect to her husband with all of the property, and the said deed given away and passed to the executors, who were her only children with her, to give the property with all rights, full enjoyment, but to be out of their hands from the will, it is a full enjoyment, but the Gov. in this case, the property was left afterwards both to the executors of the said property into two full enjoyment, and the same. After the will of the said property, the executors shall have the full enjoyment of the property.

the full enjoyment of the property, the executors shall have the full enjoyment of the property.

the full enjoyment of the property, the executors shall have the full enjoyment of the property.

10 L W 501 (1939) 1 M L J 575

111. 1939 Mal 501 (1939) 1 M L J 575

—S 11 Provision—Maintenance decree

—S 11 Provision—Maintenance decree

—S 11 Provision—Maintenance decree

—S 11 Provision—Maintenance decree

—S 11 Provision—Maintenance decree

—S 11 Provision—Maintenance decree

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—S 11 Provision—Maintenance decree

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T P ACT (1882) S 52

showing the property as belonging to the T P Act cannot be relied on as such consent. (PERUMAL MOOPPAN v SUGARWALLA HUNDALIAH 1939 M W N 1115 (2) = A.I.R. 1939 Mad 289 = (1939) 1 M L J 74)

—S 41—Applicability—Court sales

—S 41—Applicability—Court sales

—S 43—Applicability—Daughter of deceased becoming sole life holder—Maternal grandsons of deceased fraudulently representing that they were entitled to create mortgage, mortgaging estate of deceased—Suit by daughter for setting aside sale in execution of mortgage decree—Death of daughter—Pending appeal—Estate of deceased devolving on maternal grandsons—Effect on mortgage of their shares

It is the duty of the Court while passing a decree to

It is the duty of the Court while passing a decree to

It is the duty of the Court while passing a decree to

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During the pendency of appeal from the decision of the suit the daughter who had instituted the suit died and the estate of the deceased devolved on the maternal grandsons of the deceased

Held, that under S 43, the maternal grandsons could not retain their share in the mortgaged property and the mortgage was void as to their shares

—S 50—Good faith—Payment to wrong person without proper inquiry—If protected

Where a person who under the law is liable to pay rent to a particular person whose title he has recognised, makes payments without proper inquiry, to a wrong person merely on the ground that the latter sends him a notice stating that he has purchased those lands it

notice stating that he has purchased those lands it

notice stating that he has purchased those lands it

—S 51—Pre-emption suit—Bona fide improver by vendee—Right to claim compensation—Marwar. Although the T P Act has not been introduced in Marwar the Courts in Marwar can very well take notice of the fact that the vendee is a bona fide improver

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T. P. ACT (1882), S 52

P T ACT (1882), S. 53.

being granted by the Court, the rule of *lis pendens*

But if the property is alienated pending suit without the permission of the Court, though for the satisfying the debts which have priority over for maintenance, the alienation must be the result of the suit by reason of S 52, T. P. Act, (J) GANGUBAI PANDURAM v PAGUBAI

PATTUMEDAMMAL v. NANJAPPA. 49 L W 241 = 184 I C 824 = 1939 M W N 311 = A I R 1939 Mad 276.

NARAYAN 185 I C 81 = 41 Bom L R 815 = A I R 1939 Bom 403.

—S. 52—Applicability—Court sales

The principle of *lis pendens* is applicable even to Court sales, and a purchaser of mortgaged property in Court sale held after the mortgage suit was filed is bound by the mortgagee's decree as at the sale he purchases the right, title and interest of the mortgagor which are subject to the mortgage and cannot claim a better right than the mortgagor. (Bhide, J) LALIT MOHAN v. HARDAT RAI 41 P L R 629 = A I R 1939 Lah 146

—S. 52—Applicability—Mortgage of holding by ryot—Suit on—Preliminary decree—Subsequent sale of holding by Collector for arrears of rent under Madras Estates Land Act—If affected by *lis pendens*. See MADRAS ESTATES LAND ACT, SS 5 AND 125

49 L W 327. —S. 52—Mortgage sale—Sale held during pendency of maintenance suit for charge on property—Purchaser, if hit by *lis pendens*.

A purchaser at a sale held in execution of a mortgage decree must be construed to have purchased both the

as they stood before, not hit the mortgage it for declaration the mortgaged tgage itself is

(Ghose and Mukherjee) NAGENDRA NATH

237 = 69 C L J. 371 = A I R 1939 Cal 655.

—S 52—Mortgage suit—Adjudication of mortgage during pendency of—Receiver, if a transferee pendente lite

the execution of the lease did not affect the rights of any party to the suit on the basis of the mortgage, the lease was not invalid under S. 52 of the T. P. Act. It was held that though the mortgage was pending at the time of the lease, the lease was not invalid under S. 52 of the T. P. Act. It was

183 I C. 97 = 12 R N. 48 = 1939 N. L J 202 = A I R. 1939 Nag 128.

—S. 52—Permanent lease during pendency of mortgage suit—If a transferee pendente lite

RAM CHANDER : 184 I C. 2 1939 A I

—S 52—Applicability—Maintenance suit by

licability—Hindu widow—Surrender of daughters pending suit by husband for recovery of debt from estate in transfer and if void.

A surrender by a Hindu widow of her husband's estate

maintenance charged which a decree is made movable property. allowed to shorten the

T P ACT (1882), S 11

the examination must be carried out in the light of S 11, T P Act, when the instrument is one transferring immovable property. If the examination discloses that the transferor has used words creating an absolute interest, those words must be given effect to, notwithstanding that later words are used which restrict the right of full ownership. A settlement deed after reciting that the settlor on account of the affection she had towards the two donees and in consideration of the service that was being rendered by them to her, had with all her heart and by means of the said deed given away certain properties to the donees, who were her only heirs with power to enjoy the properties with all rights further provided 'But from out of the income from the said properties I shall during my lifetime pay the Gov

succeed thereto. Both of them shall enjoy the properties without making any alienation thereof by way of gift exchange, sale, etc."

Held, on a construction of the acquired an absolute estate under

A I R 1939 Mad 509=(1939) 1 M L J 575

—S 11 Proviso—Scope—Maintenance decree charging immovable properties—Arrears due under—Transfer of portion by decree-holder—Stipulation that assignee should not bring charged property to sale—Validity of

Where a portion of the arrears of under a decree providing for payment amount every month and charging in ties for payment of the said amount is

bring the charged property to sale. Such a restriction can be validly imposed and would be covered by the proviso to S 11, T P Act (*Venkataramana Rao and Sudart JJ*) VENKATAPPA I SUNDARARAJULU NAIDU 1939 M W N 226 =

—S 36—Applicability—A to claim apportionment of rent

The principle of S 36 of T P Act would also apply to the case of ar

—S 41—Applicability—Cor owner—Proof—Entry in survey

For the operation of S 41 of the Act, it must be shown that the property was the ostensible owner express or implied of the person. In a case where there is consent, the mere fact that an entry was made in the

T. P ACT (1882) S 52

survey register showing the property as belonging to the transferor cannot be relied on as such consent. (*Venkataramana Rao J*) PERUMAL MOOPPAN v SUBRAMANIA MUDALIAR 1939 M W N 1115 (2) = A I R 1939 Mad 299=(1939) 1 M L J 74

itary sales

J) BABA

WADHAI

184 I O 797=1939 N L J 496.

—S 43—Applicability—Daughter of deceased becoming sole life holder—Maternal grandsons of deceased fraudulently representing that they were entitled to create mortgage, mortgaging estate of deceased—Suit by daughter for setting aside sale in execution of mortgage ing appeal—Estate of grandsons—Effect on

passing a decree to take notice of the circumstances which happened since the institution of the suit and to frame the decree so as

grandsons of the deceased

Held, that under S 43, the maternal grandsons could

—S 50—Good faith—Payment to wrong person without proper inquiry—If protected

Where a person who under the law is liable to pay rent to a particular person whose title he has recognised

latter sends him a d those lands it made in good faith P Act (*Harris, KRISTO ROY v*

IC 132=5 B R 718 = A I R 1939 Pat 540

—Bona fide improvis by vendee—Right to claim compensation—Marwar. Although the T P Act has not been introduced in Marwar yet the Courts in Marwar can very well take consideration the general principles embodied in Act without being bound by its technical provisions ere, therefore the value of the property which the ntiff seeks to obtain in assertion of a right of pre

spending inner and the con pensation HANKAR R 1 (C) r leave to sue in forma pauperis—Mortgage over suit property

T. P. ACT (1882), S. 52

executed by defendant after application and before grant of leave—If affected.

In the case of an application for leave to sue in *forma pauperis* which is later on registered as a suit on leave being granted by the Court, the rule of *lis pendens* operates from the date of the application for leave to sue in *forma pauperis*. A mortgage effected by a defendant in the suit in respect of the property in suit after the application and before the grant of leave is consequently affected by *lis pendens*. (*Venkataramana Rao, J*)
PATTUMEDAMMAL v. NANJAPPA. 49 L.W. 241 = 184 I.C. 824 = 1939 M.W.N. 311 =

A I R 1939 Mad 275.

—S. 52—Applicability—Court sales

The principle of *lis pendens* is applicable even to Court sales, and a purchaser of mortgaged property in Court sale held after the mortgage suit was filed is bound by the mortgagee's decree as at the sale he purchases the right, title and interest of the mortgagor which are subject to the mortgage and cannot claim a better right than the mortgagor. (*Bhide, J*) LALIT MOHAN v. HARDAT RAI. 41 P.L.R. 629 =

A I R 1939 Lah 146

the T. P. Act was acted upon and the lessee had obtained possession. The mortgagor, after a decree on the mortgage suit, purchased the property. The mortgagee's decree was not binding on the purchaser as the mortgage was not registered. The mortgagee's decree was not binding on the purchaser as the mortgage was not registered.

S. 52, T. P. Act could not be invoked by the plaintiff, but it was held that as the sale to the mortgagee was a private sale and as the entire decree amount had been paid out of the sale consideration and furthermore inasmuch as

P. T. ACT (1882), S. 53.

with the suit (by transfers to a third party) It may be that the purchaser has already a mortgage over the property in suit created in his favour prior to the suit, for debts which have priority over the maintenance claim. But if the property is alienated pending suit without obtaining the permission of the Court, though for the purpose of satisfying the debts which have priority over the claim for maintenance, the alienation must be subject to the result of the suit by reason of S. 52, T. P. Act (*Lokur, J*) GANGUBAI PANDURANG v. PAGUBAI NARAYAN. 185 I.C. 81 = 41 Bom L.R. 815 =

A I R 1939 Bom 403.

—S. 52—Applicability—Mortgage of holding by ryot—Suit on—Preliminary decree—Subsequent sale of holding by Collector for arrears of rent under Madras Estates Land Act—If affected by *lis pendens*. See MADRAS ESTATES LAND ACT, SS 5 AND 125

49 L.W. 327.

—S. 52—Mortgage sale—Sale held during pendency of maintenance suit for charge on property—Purchaser, if hit by *lis pendens*

A purchaser at a sale held in execution of a mortgage decree must be construed to have purchased both the property as they stood before, not hit the mortgagee's claim for declaration of the mortgagee's claim.

—S—

on the surrender of the property to the Receiver of the property.

property has transferred it or otherwise dealt with it. His whole estate devolves on the Receiver, just as it would devolve on his heir in case of death. (*Follock, J*) INDIAN COTTON CO. LTD. v. RAMCHARANLAL. 183 I.C. 97 = 19 D.N. 20 =

—S. 52—Applicability—Maintenance suit by

A surrender by a Hindu widow of her husband's property

T P ACT (1882), S. 53

the widow, if it is found to have passed with intent to

—S 53—Applicability—Suit by decree holder under O 21 R 63 C P Code—Frame of See C P CODE, O 21, R 63 17 Pat 588

purpose of defeating or delaying him But the test to be applied to cases under this section is whether the purpose of the transfer is to prefer one creditor to the other, or whether the purpose is to prefer the transferor himself S 53 of the Act is not intended to apply to a transfer by which one creditor is preferred to another It is intended to apply to transfers where the transferor

—S 53—Fraudulent preference—Debtor's right to prefer one creditor over another—Transfer of property to one creditor to avoid execution of decree by the other creditor—Validity—Conditions

It is open to a debtor to convey his property to one of two creditors to whom he is indebted in preference to the other though it may be effected to avoid the execution of his decrees for himself one credit him and the retention of the excess amount for his own benefit indicate an intention to defeat or delay the other creditors especially when he has no other property left Such a transfer is wholly void and cannot be upheld even to the extent of the amount actually due to the transferee creditor (Lokur, J) BAI HAKIMBU v DAYABHAI 41 Bom LR 1101= AIR 1939 Bom 508

—S 53—Fraudulent transfer—Par ration found to have been paid—Absence of secured debt—Transaction found to be creditors—If may be upheld to extent of paid

right to the benefit of the doctrine of subro it can never be held that even when there existing debt the mere fact that some passed under a mortgage which on the been held to be in fraud of creditors, will justify the view that the mortgage can be held to constitute a valid security to the extent of the contemporaneous advance

—S 53—Fraudulent transfer—Test—Absence of proof as to consideration

Where subsequent to a decree against him, the judgment-debtor sells all his property to one who knew

T P ACT (1882), S 53

about the decree, and there is no proof of any earlier

there is no evidence of the existence of any such creditors much less that any were paid off, the transaction is a fraudulent one and not genuine (Hamilton, J) MATHURA PRASAD v WIDOW OF UMRAO

9 OWN 136=1939 O A 306.
ce of a creditor with intent to voidable—Sale in lieu of dower

A transfer of property even if made with the intention of defeating an anticipated suit or execution is not voidable under S 53 T P Act, merely because its effect or object was to prefer one creditor to another S 53 contemplates only a transfer which removes the whole or part of the debtor's property away from the body of creditors for the benefit of the debtor Where the dower was in fact due and a sale is executed by a Mahomed in husband to his wife it is valid if no benefit was thereby retained to the husband (Zia ul Hasan and Hamilton JJ) RAM RATAN IAL v AKHTARI BEGAM 14 Luck 621=181 IC 181=1939 O L R 241=1939 O W N 398=11 R O 287=1939 O A 376=A I R 1939 Oudh 230

—S 53—Preference of one creditor—Validity of transfer

A transfer cannot be said to defeat or delay creditors within the meaning of S 53 of the T P Act if simply one creditor is preferred to another (Mukherjee and Lalit Mohan Ghose v Anil 43 O W N 1136

Scope—Benefit of section—Right to—

Decree holder purchaser—Right to attack private sale by debtor after decree and before sale in execution—Suit by private purchaser—Plea by decree holder purchaser of S 53 in defence—If open

It is only a defeated or delayed creditor or a subsequent transferee who has the option to impeach a transfer under S 53 A mere auction purchaser of the property, who is not the decree holder himself is not a creditor,

er of Property Act The decree holder ht to the benefit of S 53 by himself tion purchaser and if the property t the auction had been transferred by with intent to defeat or delay him. lable at his option He may plead

A I R 1939 Bom 606

—S 53—Scope—Fraudulent transfer—Plea in defence—If open in suit by transferee

Where the judgment debtor transfers his property in trust to the trustee who brings a suit for a declaration that property which is the subject of a charge by a consent decree cannot be sold in execution of that decree because it is trust property and not the property of the judgment debtor, it is open to the attaching creditor to plead in defence that the transfer was in fraud of creditors (Davis, J.C. and Alekha, J) NARAINIDAS

T. P. ACT (1882), S. 53.

PERUMAL v. BHOJRAJ FREMCHAND.

I.L.R. (1939) Kar 269 = 181 I.C. 888 =
11 R.S. 244 = A.I.R. 1939 Sind 97

—S. 53—Suit by creditors impeaching alienation by debtor—Court-fee. See COURT-FEES ACT (AS AMENDED IN MADRAS), S. 7 (iv A) AND SCH. II, ART. 17 A (1) 1939 M.W.N. 778

—S. 53 A—Applicability—Document evidencing receipt of advance against sale reciting that balance should be paid within certain time.

Document contemplated by S. 53 A need not be a formal agreement or contract, nor need it purport to be in its entirety an agreement, but part of the document at least must be in essence an agreement or contract. It is not sufficient to say that the terms of an agreement can be ascertained from a document which purports to be on the face of it merely a receipt. Where therefore a document recited that a certain sum of money was received as an advance against the sale of a piece of land for a certain sum and the balance to be paid within a certain period

Held, that by merely mentioning the period within which the balance of the purchase money was to be paid, the document could not be construed as an agreement

—S. 53 A—Applicability—Family settlement—Registration—Necessity.

Where in respect of certain mutation proceedings the matter was pending before arbitrators, a compromise is filed that parties had entered into a family arrangement and that the disputes may be decided in terms of the family arrangement as set out in the application, and it is so decided, such an arrangement being reduced to writing is compulsorily registrable. To such a case S. 53-A of the Transfer of Property Act has no application (*Bennet and Verma, J.*) TULSHI RAM v. GOBIND SINGH. 181 I.C. 91 = 12 R.A. 175 = 1939 E.D. 292 = 1939 A.W.R. (H.C.) 544

manent lease is unregistered and is defective in not complying with the requirements of S. 107 of the T.P. Act, the defect will be cured by the provision in S. 53-A 'that the transfer has not been completed in the manner prescribed thereby by the law for the time being in force' (*Zia ul Hasan, J.*) JUMNAM KHAN v. JAGANNATH.

179 I.C. 635 = 1939 O.L.R. 65 =
1939 O.A. 170 = 1939 O.W.N. 102 =
11 R.O. 194 = A.I.R. 1939 Oudh 85

—S. 53 A—Applicability—Lease pending suit on mortgage—Lessee obtaining possession though lease not signed by both parties—Private party—Suit by lessee against purchaser of S. 53 A—If maintainable. S. 53 A—APPLICABILITY.

—S. 53 A—Applicability—Receipt—When sufficient for purposes of S. 53-A.

T. P. ACT (1882), S. 53-A.

receipt of a sum of money from another as earnest money for the sale of a house for a particular price and that a portion of the consideration was to be reserved with the vendee for payment to a mortgagee, and the boundaries of the house were also given, it was held that the receipt was sufficient for the purpose of S. 53-A of the T.P. Act as all the essential terms of the contract could with reasonable certainty be ascertained from it (*Bennett, J.*) FIRDOS JAHAN v. MAHOMED YUNUS. 184 I.C. 401 = 12 R.O. 109 = 1939 O.W.N. 876 = 1939 O.L.R. 614 = 1939 A.W.R. (C.C.) 193

—S. 53 A—Benefit of—If available only as a defence

A plaintiff cannot claim the benefit of S. 53-A, Transfer of Property Act, but it is available only as a defence

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—S. 53 A—Requirements of—Unilateral act of vendee—If sufficient.

In order to satisfy the requirements of S. 53 A of the T.P. Act, it is enough to show that the transferee has taken possession or continued in possession in part of the contract and has done some act in pursuance of it. The section does not require any act or any specific consent apart from the contract on the part of the vendor. (*Bennett, J.*) FIRDOS JAHAN v. MAHOMED YUNUS. 184 I.C. 401 = 12 R.O. 109 = 1939 O.W.N. 876 = 1939 O.L.R. 614 = 1939 A.W.R. (C.C.) 193.

—S. 53 A—Retrospective operation of.

S. 53 A is retrospective in the sense that it affects suits brought after 1st April, 1930, in respect of transactions effected before that date. (*Mosley, J.*) DAWYI v. MAUNG PO SAUNG. 182 I.C. 651 = 12 R.E. 21 = A.I.R. 1939 Rang. 175.

—S. 53 A and Civil Procedure Code O. 21, R. 103—Right conferred by S. 53 A—If available to a plaintiff.

1939 O.W.N. 876 = 1939 O.L.R. 614 =
1939 A.W.R. (C.C.) 193.

—S. 53 A—Scope—If retrospective.

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—S. 53 A—Scope and effect of.

S. 53 A gives a party relying upon it such rights which, but for the lack of some formality, he would have obtained by an agreement, but it gives no more and no right which the informal agreement would have given. (*Hart, J.*) RAM LAL SAHU v. MR. 182 I.C. 618 = 5 B.R. 785 = 12 R.P. 30 = A.I.R. 1939 Pat. 296.

—S. 53 A—Scope and nature of the right con-

enactment
tion on a
contract
(S. 53)

T P ACT (1882) S 54

T P ACT (1882) S 55

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—S 54—Ap

Copyright—Natu

Necessity—Expression 'intangible thing in S 54' if
refers only immovable property

Though there is no doubt abundant authority that
copyright is an intangible thing it is equally clear that
copyright is movable and not immovable property
S 54 of the T P A L

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—S 54—Sale of property worth less than Rs 100
—Deed unregistered—Possession of property delivered
some days later—Sufficiency to validate sale

Where an unregistered deed of sale in respect of im-
movable property worth less than Rs 100 is delivered

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deed

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tion u a u u u g u t u u e g i s e r e u s a e e u e u
will not of itself confer any title on the purchaser
(Dhale J) MOHAMMAD YAQOOB ALLV v
CHHOTAY LAL MISTRI 179 IC 583-5 BR 244=
11 EP 396=AIR 1939 Pa* 218

—Ss 54 and 58 (c)—Sale or mortgage by condi-
tional sale—Test—Onus

It is a matter often of some difficulty whether a parti-
cular document or set of documents disclose a transac-
tion of mortgage by conditional sale or out and out sale

In order to bring a transaction with
mortgage the relationship of debtor

subsist between the parties and if it

which the transfer is a security it is

that the transaction is a mortgage

appears on the face of it to be a mortgage
absence of fraud it must be held to embody a transac-
tion of sale The burden of proving it to be a deed of

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1939 A L J 377-1939 A W R (H C) 362-
AIR 1939 All 539

—S 54—Sham transaction—Suit for possession by
vendee—Maintainability

A sham transaction is not sale It is only in
cases where transfer is genuine and title passes
that the vendee is entitled to possession and the
vendor can maintain suit for consideration money if it
has not been paid Where however no consideration
passes from the vendee nor is there any intention of
passing the rights from the vendor to the vendee and

remedy

The contract set out in S 55 (2) of the T P
Act is an implied term in every sale in the absence of
a contract to the contrary Under this implied term
there is a liability on the vendors for title and power to
transfer Where a sale deed recites that a certain area

possession has not been obtained of the area in question
(Bennet and Verma JJ) LACHHMI NARAIN v HAR
SWARUP 180 IC 342-11 RA 440=
1938 A L J 1136-1938 A W R (H C) 803=
AIR 1939 All 170

—S 55 (3)—Document of title—Mortgage deed
conferring power of sale on mortgagee—Sale in pur-
suance of—Right of purchaser to custody of mortgage
deed as document of title deed

A deed of mortgage under which the mortgagee is

MANENT FUND LTD v PUSHPAMMAL

1939 MTW N 482-60 L W 916=

AIR 1939 Mad 774=(1939) 2 M L J 434

—S 55 (4)—Applicability—Movables—Vendor's
lien—If exists

Quære—Whether equity has extended the principle
of the vendor's lien to movable property (Leach CJ
and Patanjali Sastri J) SHIVA RAO v SHANMU
GHASUNDARA SWAMI 50 L W 844

—S 55 (4)—Sale of movables—If exists

another without doing so, the original vendor who is
obliged to pay the mortgage money is not entitled to
claim that amount from the second vendee as a charge on

partly in cash and partly in promises—Transferee
going into liquidation before fulfilment of promises—
Transferor's right to charge

There is a world of difference between a covenant to
pay the purchase price and a covenant to pay a sum of
money in the future in the one case the consideration
consists of money in the other the consideration consists
of the covenant itself 31 Cal 57 (PC) Rel on Hence
where there was an agreement to transfer certain clay
works to another company the consideration for which
was partly in cash, partly in promise to employ the

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of
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T. P. ACT (1882), S. 55

transferor at a certain rate, and partly for the allotment of shares to the transferor and the company went

of contracts (*Roberts, C. J. and Braund, J.*) JOHN STON v. OFFICIAL LIQUIDATOR. 160 I.C. 69 = 11 E.R. 379 = A.I.R. 1939 Rang 46

—S. 55 (4)—Vendor's lien—Separate suit—Necessity—Conditional decree in vendor's suit for possession—Property.

Though an unpaid vendor is only entitled to a statutory charge under S. 55 (4) (b) of the Transfer of Property Act, he is entitled to a decree for possession of the property.

to operate upon the property even when the possession of it passes to the vendee by the vendee for possession course, to avoid multiplicity

the decree granting possession, that it is subject to the charge of the vendor to the extent of the unpaid purchase-money. If the charge is incorporated in the decree it could be enforced in execution (*Niyogi, J.*) SHOBHALAL v. SIOHELAL. I.L.R. (1939) Nag 636 = 1939 N.L.J. 252 = A.I.R. 1939 Nag 210.

—S. 55 (4) (b)—Lien for unpaid purchase money—Promissory note by vendee to vendor for part of sale price—Right of vendor to enforce charge

Under S. 55 (4) (b) of the T. P. Act, the charge subsists in every case where the amount of the purchase-money remains unpaid either for the whole or

—S. 55 (4) (b)—Sale deed—Vendee retaining portion of sale price for payment to vendor's creditor—

for payment to a mortgagee of portion of the properties sold, the lien does not cease to exist but continues, so long as there is no novatio or a direct undertaking between the vendee and the mortgagee for the payment to the latter of the money retained in the vendee's hands. If there is such a novatio or a direct undertaking, then that money ceases to be a part of the unpaid purchase-money. Where there is no privity between the vendee and the creditor who is to be paid off, the money remains in fact money at the disposition of the vendor

T. P. ACT (1882), S. 58.

—S. 55 (6) (b)—Nature of charge created under—Advance for sale of minor's property for binding purpose—

of the had rian agrees to sell minor's property for a purpose binding on the minor and receives an advance, to that extent the minor's estate becomes charged. No act of parties to create a specific charge is necessary (*Niyogi, J.*) TUKARAM MANHAJI v. SHRIKRISHNA. 163 I.C. 456 = 12 R.N. 65 = 1939 N.L.J. 260 = A.I.R. 1939 Nag 209.

—S. 56—Applicability—Survey number charged at Loan advance—Subsequent sale, if can invoke S. 56 of the Act.

of S. 56 of the Transfer of Property Act, the property mortgaged must be consisting of two or more survey number when it is a Land Improvement Loan advance upon it, was a single property and not capable of description as two or more properties, and later on a portion of it is sold, this does not make the property two or more properties at the time the liability or charge under S. 7 (1) (c) of the Land Improvement Loans Act was created. To such a case S. 56 of the Transfer of Property Act has no application. (*Burton, F.C.*) YESHWANT GANPAT KOMTI v. BALIRAM. 1939 N.L.J. 235.

—Ss. 58 and 105—Description as lease but really a mortgage—Effect.

A document, which purports to be a lease but fulfils mortgage lease (*Harker, J.*) I.C. 239 = L.J. 308 = Nag. 166.

—S. 58—Profits accruing from immovable property—If can be mortgaged—Contract Act, S. 172.

correct under a lease to a mortgagee does not under any of the forms specified in S. 58 of the T. P. Act transfer an absolute interest. Such a mortgage is not an absolute assignment and the RAM

66 I.A. 60 = 1 L.R. (1939) 1 Cal 283 = 43 C.W.N. 281 = 179 I.C. 328 = 5 B.R. 258 = 20 Pat.L.T. 147 = 1939 A.W.R. (P.C.) 18 = 49 L.W. 229 = 11 R.P.C. 134 = 1939 O.A. 279 = 1939 R.D. 144 = 69 C.L.J. 254 = 1939 M.W.N. 601 = 41 Bom.L.R. 672 = 1 L.R. (1939) Kar 78 = 1939 C.W.N. 43 = 1939 O.L.R. 46 = A.I.R. 1939 P.C. 14 = (1939) 1 M.L.J. 514 (P.C.)

—S. 58—Profits accruing from immovable property—If can be mortgaged—Contract Act, S. 172.

T P ACT (1882), S 58

PUNJAB CO OPERATIVE BANK, LTD

179 IC 968=11 RL 654=41 PLR 239=

AIR 1939 Lah 15

—S 58 (b) and (c)—Simple mortgage and English mortgage—Difference between

vention of the Court the right to must be worked out in execution supervision of the Court. There is, a personal obligation not only t

the interest on the loan. English mortgages are quite different. In an English mortgage there is a transfer of the ownership of the mortgaged property with a promise to repay the debt on a certain date. If the money is duly paid the mortgagor has a right to have the property retransferred to him by the mortgagee (*Roberts, C J Mya Bu Baguley Ba U and Braund, J J*)
 12 R Pesh 29=AIR 1939 Pesh 41

—S 58 (c)—Applicability—Deed in form of sale—Amount advanced less than price of property transferred—Parties referred to as creditor and debtor—Provision for reconveyance on payment of amount advanced within fixed period—Nature of transaction. See DEED—CONSTRUCTION 41 Bom LR 1251
 —S 58 (c)—Mortgage by conditional sale or out and out sale—Test—Terms of instrument—Transfer for adequate price with a condition to retransfer—Nature of document
 The question whether an instrument is a mortgage by

held that the transaction was a sale
 (*Thom, C J and Ganga Nath, BANWARI LAL*)
 1939 ALJ 946=

—S 58 (c)—Mortgage or deed

Where a deed of transfer contained a stipulation that if at any time within three years the transferor was to pay back the amount paid to him in respect of the property transferred with interest after deducting the income which the transferee might derive from the property there should be a reconveyance to the transferor, it was

T P ACT (1882), S 58

held on a construction of the deed with reference to the tests to be applied that the transaction amounted only to a mortgage by conditional sale and not to a sale with a condition for repurchase (*Grille, J*) SAHEBA DEO-CHAND v JAGANNATH 1939 N LJ 544

58 (c), Proviso—Scope and effect of after the amendment of 1929, the proposition

(d) and 62 (b)—Usufructuary mortgage during which redemption cannot take place

S 58 (c) of the T P Act clearly implies that there can be a term fixed in a usufructuary mortgage for the mortgagee's enjoyment during which redemption can not take place (*Addison and Ram Lal J J*) KISHAN SINGH v NATHU RAM 41 PLR 270=

AIR 1939 Lah 235

—S 58 (e)—Interpretation—Transfers the mortgaged property absolutely to the mortgagee—Effect of

of the mortgagor absolutely to the mortgagee at the word 'and' to mean that no part of the property remained in the mortgagee. Here it adds the word 'or' the property is transferred to the mortgagee as agreed upon its true construction does not declare an English mortgage to be an absolute transfer of property. It declares only that such a mortgage would be absolute were it not for the proviso for retransfer (*Lord Porter*) RAM CHAND v JAGANNATH

—S 58 (f)—"Documents of title"—Factory

Where the documents which were deposited included the "sold notes" by firms from whom machinery of the

—S 58 (f)—Documents of title—Map of properties and unimportant letters

Map of properties and other documents consisting of unimportant and useless letters cannot be recognized as title deeds. Deposit of these papers cannot therefore create any equitable mortgage in favour of persons with whom they are deposited (*Tek Chand and Bhidi, J J*)

T. P. ACT (1882), S. 59.

T. P. ACT (1882), S. 67.

AIR 1939 Rang 185.

—S 58 (f)—Machinery—Deposit of documents of title—If creates equitable mortgage

Machinery which has been firmly fastened to the earth

—Suit for redemption by one of the heirs of mortgagor—Other heirs made parties—Suit not maintainable against one of the heirs—Plaintiff, if entitled to relief.

In order that the integrity of a mortgage may be

104 L.C. 213—1938 A.W.H. (H.C.) 404=

AIR 1939 All 615.

—S 59—Applicability—Deed of charge—Requisites of validity. See T. P. ACT, S 100

50 LW 844.

—S. 59—Memorandum of deposit of title deeds—When requires registration See MORTGAGES

43 CWN 806 (P.C.).

—S 59—Oral mortgage—Suit for redemption—Maintainability—Proper remedy of mortgagor

A suit framed as a suit for redemption of land which is the subject of an oral mortgage for a sum of one hundred rupees or upwards cannot be sustained, as the mortgage is required under S 59 of the T P Act to be effected by a registered instrument. The proper course for the mortgagor to take in such a case would be to sue for possession relying on his title. In such a suit it is not permissible for the defendant to rest his claim to

1939 A W R (H C) 559 = AIR 1939 All 600.

—S. 60—Suit framed for possession challenging mortgage decree—Redemption, if can be allowed

In a suit for possession of mortgaged property challenging the mortgage decree on the ground of collusion, if no prayer is made for the relief of redemption and necessary issues are not tried, redemption cannot be allowed (*Bhidi, J*) LALIT MOHAN v. HARDAT RAI 41 P L R 629 = AIR 1939 Lah 146

—Ss 63 A (2) and 72—Cost of improvements—Mortgagee's right to add to principal amount

Under Ss 63-A (2) and 72 of the T P Act, a mortgagee, in the absence of a contract to the contrary, is entitled to add to the principal mortgage money the cost of improvements effected by him only where they have been necessary to preserve the property from destruction or deterioration or to prevent the security from becoming insufficient (*Addison and Ram Lal, J J*) SURAJ MAL v CHANDAR BHAN 41 P L R 80=

AIR 1939 Lah 129.

—Ss 67 and 100 and C P Code, O 34 E 14—Future maintenance declared charge on house—Sale in execution, subject to charge—Further defaults in payment of maintenance—Enforcement of decree—Suit under S 67 T. P. Act—Necessity—Scope of O 34, R. 14.

Where the future maintenance accruing to a widow was declared by the decree a charge upon a house the house is not made security for the re-payment of money of the widow 'by any act of parties' or 'by operation of

the meaning of S 100 of the Transfer of Property Act. It is only by virtue of a decree that a house is sold in execution of the decree subject to the right of future maintenance and there is subsequently default in payment of the maintenance instalments, it is not necessary for the widow to bring a suit under S. 67, T. P. Act. O. R. 14, C. P. Code, cannot be a bar for the enforce

—S. 59—Scope—Non-compliance—Effect—Suit on mortgage—Failure to prove due execution and attestation—Money decree on personal covenant—Court's power to pass.

The fact that a mortgage deed is not duly proved to have been executed and attested, as required by S 59 of the Transfer of Property Act, is no bar to the Court passing a money decree on the personal covenant contained

—(as amended in 1928), Ss 59 and 100—Scope and effect of—Limited company—Debenture issued by—Loan on security of specified immovable property—Registration—Necessity.

Y. D. 1939—70

T. P. ACT (1882), S. 67-A.

of the decree otherwise than by suit. The effect of the change in the provisions of O 34, R 14 is that a mort-

181 I.O. 626 = 12 R.A. 264 =

1939 A.W.R. (H.C.) 164 = A.I.R. 1939 All 260

where under a mortgage bond the amount is made payable in instalments with a provision that in case of default of payment of two consecutive instalments, the mortgagee might treat the whole of his mortgage as payable. That being an option given to the mortgagee, if he chooses to waive the penalty and sue merely on those instalments which are cannot be heard to say it is bound to sue for the whole amount and to enforce a penalty against him in such a case has the benefit of a

T. P. ACT (1882), S. 70.

181 I.O. 902 = 11 R.A. 625 =
1939 A.W.R. (H.C.) 164 = A.I.R. 1939 All 260
—S 68 (1)(c)—Subsequent purchaser—If can be
ly property—Absence of

esumably aware that the security which he was accepting for his loan was pro and he for legal t be said by or in in he AN

1939 A.W.R. (H.C.) 164 = A.I.R. 1939 All 260

—S 68 (1)(c)—Subsequent purchaser—If can be made liable under

Where a subsequent purchaser damages the security he can be made liable for it. S 68 (1)(c) only speaks of the 'mortgagor,' but in view of S 59 A of the Act.

Mortgagee to bring a suit for redemption of the mortgage. The provisions of S 67-A of the T. P. Act or of S. 17, C. P. Code, or of both together cannot give either Court jurisdiction in regard to the mortgage of

ence of personal covenant.

Where the mortgagor's covenant to repay the principal and interest within a time fixed and that in default of such payment, the mortgagee would be entitled to sue for foreclosure, there is no personal covenant in the deed, binding t of S. 68 of decree co BISHAN L.

—S 70—Acquisition by lessee of equity of redemption—If accession to mortgaged property

Per Roxburgh J.—If a lessee of a land which is sub-created by the landlord acquires the tion, the acquisition is not an accession property under S. 70 of the T. P. Act. Roxburgh, J.J. SURAJ CHANDRA

—S 70—Mortgage of entire mouza—Mortgagor having title only to portion but adversely possessing whole—Mouza subsequently dilapidated by river and go as

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T. P. ACT (1882), S. 73.

entire mooza. The mooza was subsequently diluviated by a river, and after some years a new char was formed the area of which was much larger than the old mooza. This large char was immediately taken possession of by the mortgagor whose title to the entire mooza was perfected by 12 years' adverse possession.

Held, that the new lands must be considered an accession to the mauza and the enlarged area must all go as security to the mortgagee. (*M. C. Ghose and Bariley, J.J.*) SAILABALA DEBI v. SWARNAMOYEE DEBI

181 I C 867 = 11 R C, 867 =

63 CLJ, 528 = A I R 1939 Cal 275.

—S. 73—*Mortgagee with possession obtaining decree for arrears of rent and ejectment—House sold in execution and after satisfaction of decree surplus amount deposited in Court—Surplus amount, if represents substituted security*

A mortgaged his house with possession to B B filed a suit on the rent note for arrears of rent and ejectment and obtained a decree. In execution of the decree the house was attached and sold and after the satisfaction of the decretal amount the balance was deposited in Court.

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mortgage and was not liable to attachment and A was entitled to recover this amount as part of the security. (*Ranjitmal, J.*) MANGILAL v. TILOKCHAND.

1939 Mar L E 131 (Civ.)

—S. 76—*Mortgagee with possession—Failure to keep account—Presumption.*

The mortgagee is liable to the mortgagor for any and every sum realised by him out of the mortgaged property. This makes it incumbent upon him to keep a full and accurate account of the total amount received by him. If he does not keep such accounts or fails to produce them in a suit for redemption, the Court will make every possible presumption against him. In such cases his claim for interest must be disallowed. (*Nawal Kishore, C.J.*) KISHENGOPAL v. LALCHAND

1939 Mar L E 153 (Civ.)

to make annual payment to mortgagor—Effect—Redemption—Accounts—Basis for taking of

In the case of a *thika sarphisi* lease in the ordinary form, whereby the mortgagee obtains a *thika* lease at a certain reserved rent, retaining for himself a fixed amount of the rent as interest upon the *sarphisi* money the transaction is one both of lease and mortgage, but it is certainly a usufructuary mortgage in so far as the mortgagee by the deed retains possession of the *thika* property as security for the repayment of the money advanced by him to the mortgagor. If the mortgagee fails to make a payment of a fixed amount annually to the mortgagor as provided in the deed, the amount due to him gets reduced proportionately. In a suit for redemption of the mortgage accounts are to be taken on that basis on the principle laid down in S. 76 (4), T. P. Act. (*James and Rowland, J.J.*) BACHU LAL v. JANG BAHADUR RAI.

180 I C 795 = 11 R P, 537 =

5 B R 489 = A I R 1939 Pat 427.

—S. 82—*Contribution—Right to—Two mortgages in favour of same person—Later mortgage including extra item of property—Decree on later mortgage—Sale subject to earlier mortgage—Mortgagee purchasing all*

T. P. ACT (1882), S. 83.

items except one purchased by third party—Effect—Contribution for proportionate amount—Value of properties—Ascertainment—Material date.

Where there were two mortgages in favour of the same person and the later one included an extra item of property and the mortgagee obtains a decree on the later mortgage and in execution purchases all the items of property excepting one which was purchased by a third party and both the sales were subject to the earlier mortgage, the mortgagee is entitled to enforce by suit his right to contribution against the third party in respect of the proportionate amount payable by him. The effect of the purchase is to break up the integrity of the mortgage, and a portion of debt which bears the same ratio to the whole amount of the debt as the value of the property purchased by the mortgagee bears to the value of the whole of the property mortgaged, is discharged. But from the mere fact that the mortgagee has bought some of the items mortgaged it does not follow that the entire liability is wiped out. To arrive at the proper value of the property mortgaged, it must be assessed at its value

conditional deposit of the amount but even if the deposit be considered as valid, it cannot be treated as if the condition attached to it does not exist. The mortgagee is entitled to accept the money only subject to the condition and is not entitled to ignore the condition. (*Agarwala, J.*) DHANUKHARI SINGH v. JETHAN SINGH

184 I C 225 = 6 B R 25 =
12 R P 230

—S. 83—*Deposit—Validity—Suit on mortgage—Plaint filed with insufficient court-fee—Deposit of mortgage amount after return of plaint and before representation with full court fee—Validity of—Plaintiff aware of deposit when representing plaint—Effect of.*

A deposit under S. 83 of the Transfer of Property Act after a suit on the mortgage has been instituted with an insufficient court fee and before the plaint has

been presented is not a good deposit. It has been instituted and cannot be ascertained for costs, interests, etc.

The fact that the plaintiff was filed with a ridiculously inadequate court-fee and that the plaintiff deliberately incurs the quite unnecessary expenditure of the full amount of court-fee after knowing of the deposit cannot make the deposit a valid one under S. 83. (*Madanmoh, J.*) CHENGIAH v. SUBBAYYA

183 I C 871 = 1939 M W N 76 = 12 R M 386 =
48 L W 929 = A I R 1939 Mad 200

—Ss 83 and 84—*Scope—Deposit or tender—Validity—Conditions—Usufructuary mortgage in name of Hindu coparcener—Mortgage money belonging to family—Death of mortgagee—Deposit of mortgage money in names of survivors of family and widow of deceased—Validity—Mortgagor not getting possession—Suit for redemption—Right to mesne profits.*

A deposit to be a good deposit under S. 83, T. P. Act, must be one which would enable the persons entitled to take out the money forthwith. Where the mortgagee under a usufructuary mortgage is a member of a joint family consisting of himself, his brothers and his nephews, and the mortgage money is money belonging to the joint family, the amount must, if the mortgagee is dead, be deposited in the names of

T. P. ACT (1882), S. 83

the survivors, namely, the brothers and nephews of the deceased. A deposit in the names of the brothers and nephews who are really interested in the property.

case the consequences attached by S. 84 of the Transfer of Property Act to a tender under S. 83 cannot and if the mortgagee's representatives refuse to accept deposit and give up possession, they cannot, then be saddled with mesne profits from the date of notice of deposit till the date of the decree suit brought by the mortgagor for redemption mortgage. The mortgagor would, however, be liable to mesne profits from the date of the decree in up to the date of surrender of possession, for on the decided who are the persons entitled to the deposit, the latter could take the money out at once and give possession. If they fail to do so, they are liable to mesne profits. (Harries, C.J.)

ANUPA KUAR v. KAMESHWAR

183 I.C. 454 = 5 B.L.

20 Pat. L.T. 167 = A.I.R. 1939 Pat. 415

—S. 83—Valid deposit—Mortgage deed providing for final rate of interest—If rate is not sufficient to cause in effect—Effect—

The question whether the amount deposited is the amount remaining on the mortgage on the date of the deposit meaning of S. 83, T. P. Act. This would depend upon the terms of each mortgage deed. In cases where the mortgage deed provides for a rate of interest which is not sufficient to cause in effect the mortgagee would be entitled to compensation, and the amount the Court finds it to be to be what the Court deems is valid and interest mortgage always acts in per receive the amount deposited. If the mortgagee declines to accept it does not prevent interest from ceasing to run, unless the mortgagee shows that the mortgagor was either not willing or not able to pay because he had utilised the moneys.

—S. 84—Amendment, if retrospective

S. 63 of the T. P. Amendment Act of 1929 does not provide that the sections not mentioned in that Act are to have any retrospective effect. An amendment will

—S. 84 (Prior to amendment)—Tender—Disputes between claimants to mortgagee's estate—If withdrawn by depositor—Re-deposit in suit by claimant for declaration of title—Interest, when ceases to run

T. P. ACT (1882), S. 92.

Owing to the death of a mortgagee and disputes between the claimants to his estate, a subsequent mortgagee filed a suit for a declaration of the estate of the deceased prior mortgagee.

Ordinary tenant in possession of khotsi land liable to eviction under S. 10, Bombay R.L.A. 1939

S. 91, T. P. Act, is not necessary for ownership, but is sufficient for interest such as that of a tenant or a person having a charge. An ordinary tenant of kularag khotsi land who is entitled to be in possession of the land though liable to be evicted by the holder.

—S. 92—Applicability—N.W.P. Province

A.I.R. 1939 Pesh. 34
—S. 92—Applicability—Purchaser of equity of mortgage—If

created 3 usufructs and a pur mortgagor by the

second mortgagee, he is not entitled to claim to be subrogated to the position of the first mortgagee.

—S. 92—If retrospective.

S. 92 of the T. P. Act has retrospective effect. (Bennett and Verma, J.J.) MANGAL SEN v. KEWAL RAM 1939 A.W.R. (H.O.) 803.

—S. 92—Mortgage split up—Effect—Redemption

is redemption of the mortgage under S. 92 of the T. P. Act are complied with so far as that part is concerned. Hence a person who acquires the right of subrogation to such a part of the mortgage is entitled under O. 22, R. 10, C. P. Code, to be substituted as decree-holder to

T. P. ACT (1882), S. 92.

the extent of his right. (*Stone, C. J. and Bose, J.*)

proportionate rights (*Bennet and Verma, JJ.*)
MANGAL SEN & KEWAL RAM.

1939 A.W.E. (H.C.) 803.

the principle of subrogation was implicitly embodied in Ss. 74 and 75 of the old Act which have now been repealed by the Amending Act of 1920. The new S. 92 of the amended Act expressly deals with subrogation. Even under the old Act however, it was held that the right of subrogation could be claimed by persons and under the old Act to any set next price wanted was held mortgagee. The subrogee no doubt acquires and power of the incumbrancer whom he has. He cannot acquire any higher right. But it follows that the remedies for enforcing those the same as those that were available to the incumbrancer. The remedies of the subrogee are not so extensive with those of the original creditor. The

—(as amended in 1929), S. 92—Subrogation—Right to—Conditions—Redemption of entire mortgage by claimant to subrogation—If essential.

The law is that a right of subrogation cannot be claimed unless the prior mortgagee has been redeemed in full. It does not mean that the redemption must be

1939 P.W.N. 8—A.I.R. 1939 Pat. 375

—(as amended by Act XX of 1929), S. 92 (iii)—Vendee advancing money for discharging a prior mortgage decree—If entitled to right of subrogation in respect of that sum in the absence of a registered instrument reserving the right as required by S. 92 (iii).

In execution of a decree obtained on a mortgage the mortgaged property was about to be sold. The mortgagors agreed to sell a portion of the property to strangers who advanced the money with which the decree debt was satisfied. They obtained a sale deed and in a suit by a subsequent mortgagee they claimed a right of subrogation to the rights of the earlier mort-

T. P. ACT (1882), S. 100

gagor whose decree was discharged by the money

—S. 95—Objection based on—If can be gone into in execution.

Where the holder of a mortgage decree for sale

DRA BEZHARUA 183 I.C. 792 = 12 R.C. 187 = 70 C.L.J. 143 = A.I.R. 1939 Cal. 425

—S. 96—Mortgage by deposit of title deeds—Law in England and Burma

By reason of S. 96 of the Transfer of Property Act, a Burma has ceased characteristics of an deeds in England, title deeds carries English mortgage, at the remedies to

—S. 98—Scope—Anomalous mortgage—Combination of simple and usufructuary mortgages—If anomalous mortgage—Rights of parties

A mortgage which is partly of the nature of a simple mortgage and partly of the nature of an usufructuary these two parts within "anomalous" of the T. P. Act, 1929. The rights

of the parties have to be determined with reference to the terms of the deed of mortgage (*Harries, C. J. and Chatterji, JJ.*) BUTTO KRISTO ROY v. GOBIND RAM, MARWARI 182 I.O. 132 = 5 B.R. 718 =

11 R.P. 664 = A.I.R. 1939 Pat. 540.

—S. 100—Amended section—If has retrospective effect

S. 100, T. P. Act, has been amended by S. 50 of the Transfer of Property (Amendment) Act, 1929. S. 50 of the Transfer of Property (Amendment) Act is not mentioned in S. 63 of the same Act as not retrospective and hence S. 50 and consequently S. 100 of the Transfer of Property Act as amended has retrospective operation. (*Bennet and Verma, JJ.*) RAI INDRA NARAIN v. MOHAMMAD ISMAIL 1939 A.W.E. (H.C.) 614 = 1939 A.L.J. 849 = A.I.R. 1939 All. 687.

—S. 100—Applicability—Charge under Land Improvement Loans Act—Enforceability against land in the hands of bona fide purchaser for value without notice See LAND IMPROVEMENT LOANS ACT, S. 7. 41 Bom. L.R. 257.

—S. 100—Applicability—Future maintenance declared charge on house See T. P. ACT, SS. 67 AND 100 AND C. P. CODE, O. 34, R. 14. 1939 A.L.J. 64

T P ACT (1882) S 100

—S 100—Auction purchaser—If can claim benefit of a bona fide purchase

S. 100 Transfer of Property Act as amended, does not refer to auction sales or auction purchasers and hence the plea of a bona fide purchase for value is not open to an auction purchaser who has purchased the property without the knowledge of a charge thereon (*Bennet and Verma, J*) RAI INDRA

MAD ISMAIL

1939

1939 A L J 849

—S 100—Bona fide *tra*

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Whether the matter falls squarely within S 100 of the T P Act or whether it comes under a more general rule of law, the burden is on the transferee to establish that he is a bona fide transferee for value without notice (*Bose, J*) RENUKABAI v BHEOSAN HAPSALI

185 I C 33=1939 N L J 100

A I R 1939 Nag

—S 100—Charge created by decree—Later the property—Right to possession—Remedy of the holder

Where a charge was created by a decree over certain property which was subsequently sold in execution of a decree so far as the right to possession is concerned it lies with the purchaser and all that the charge-holder can do is to enforce his charge by suit. He cannot sue for possession (*Stone C J and Bose J*) BADRIDAS v PHATAPGIR

1939 N L J 525

—S 100—Charge—Creation—Form of words—Necessity—Expression of intention to make land a security for payment—Sufficiency

No particular form of words is necessary for the creation of a charge. If a document shows an intention to make the land a security for the payment of the money mentioned therein, that is sufficient to create a charge (*Niyogi, J*) GANGA PRASAD v RATAN CHAND

182 I C 102=11 B N 506

1939 N L J 121=A I R 1939 Nag 118

—S 100—Charge—Creation of—Declaration of lien on all assets now existing or to be brought here after—Effect of

Held, that the declaration created and intended to create an immediate charge (*Lobo J*) INDUS FILM CORPORATION, LTD *In re*

181 I C 681

11 B S 234=A I R 1939 Sind 100

—S 100—Charge—Mortgage—Distinction between

The distinction between a mortgage and a charge is that in a charge there is no transfer of interest in the property but only the creation of a right of payment out of the property specified. The creditor has a right to look to the property for satisfaction of his debts but does not acquire any interest in the property as he would in the case of a mortgage (*Niyogi, J*) GANGA PRASAD v RATANCHAND

182 I C 102

11 B N 506=1939 N L J 121

A I R 1939 Nag 118

—S 100—Construction—So far as may be—Meaning and effect—Deed of charge—Necessity for registered deed attested by two witnesses

The words "so far as may be" in S 100, T P Act have not the effect of taking S 59 of the Act which re-

T.P. ACT (1882), S 101.

quires a mortgage deed to be signed by the mortgagor attested by two witnesses and registered, out of the purview of S. 100. Unless given by statute a charge on immovable property can only be created by a registered instrument executed by the person creating the charge, and attested by at least two witnesses (*Leach, C J and Patanjali Sastri, J*) SHIVA RAO v SHANMUGHAN

—S 100—Scope—Construction—Charge—Test—Agreement to deliver possession on default in payment of maintenance—Charge, if created

While the first part of S. 100 T P Act deals with substantive rights, the second part deals with the adjective or procedural law and so the latter portion

it con-

particular agreement falls or not within the ambit of the definition. Where an agreement was that in default of payment of an agreed amount of maintenance the other party was to be at liberty to enter into possession and cultivate the land, that clearly creates a charge and does not amount to a mortgage (*Bose J*) RENUKABAI v BHEOSAN HAPSALI

185 I C 33=1939 N L J 129

A I R 1939 Nag 132

—S 100—Statutory charge under Land Improvement Loans Act S 7—Bona fide purchaser for value if exempt under T P Act S 100 See LAND IMPROVEMENT LOANS ACT, S 7

41 Bom L R 257

—S 101—Applicability and construction—Mortgagee purchasing mortgaged property pending attachment in execution of money decree—Mortgage—if extinguished by sale—Right of mortgagee to fall back on mortgage—Keeping alive—Intention—Presumption of

Where a mortgagee purchases from his mortgagor the

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of the principle of presumed intention, it makes no difference whether the third party is allowed to claim

in preference to the sale on the ground of his being a

subsequent incumbrancer or on the ground of his being an

attaching decree-holder. The principle of S 101

is not limited to cases where the rights of mesne

incumbrancers come up for decision though the

section has generally been invoked in such cases. The

section only lays down a general rule of presumed

intention and where the later conveyance would be in

operative as against any intermediate right whether

founded on an incumbrance or an attachment, the principle must be held equally to apply (*Varada chariar v SOMAS*)

—S 101—Suit by subsequent mortgagee to enforce his mortgage—Redemption of earlier mortgage, if obligatory—Rights of earlier mortgagee purchasing equity of redemption

T. P. ACT (1882), S. 105.

S. 101, T. P. Act, allows two alternative courses to the subsequent mortgagee enforcing his mortgage, namely, either to redeem the prior mortgage, or to take the property subject to that mortgage. But he cannot be compelled to redeem the earlier mortgage. If the prior mortgagee has purchased the equity of redemption, he is entitled to remain in possession of the property until the subsequent mortgagee has redeemed his prior

—Ss. 105 and 107—Leases for period less than one year—Need for registration.

The plaintiff brought two suits for recovery of rent in respect of certain property. The leases were for a period less than one year. The plaintiff did not rely on any oral agreement. The suit was based merely on certain rent notes which were not registered and the plaintiff did not sue on the basis of his title for recovery of compensation for use and occupation. The defendants were already in possession before the execution of the leases and there was no question of fresh delivery of possession.

Held, that the plaintiff could only succeed if she had sued for rent on the basis of registered leases executed by the lessor and the lessee in view of provisions of Ss. 105 and 107 and the suits were liable to be dismissed (*Bhidi, J.*) **MT MALAN v. DALAL SINGH.**

41 P L R 578 = A I R 1939 Lah. 162.

—S 106—Lease—Essence of—Provision for termination before or after expiry of time fixed—If takes it out of the category of lease

The essence of a lease as defined by S 106 of the T. P. Act is that the right to enjoy the property demis

fixed. (*Rangnagar, J.*) **DEWARKHAND CEMENT CO., LTD. v. SECRETARY OF STATE**

I L R. (1939) Bom. 320 = 182 I C 835 =

12 E B 37 = 2 Fed L J (P II) 60 =

41 Bom L R 297 = A I R 1939 Bom 215

—S 106—Lease for indefinite period at annual rent—Duration See LEASE—CONSTRUCTION

43 C W N 794.

—S 106—Monthly tenancy—Inference of. See LANDLORD AND TENANT—PERMANENT TENANCY

A I R 1939 Pat 296.

—S 106—Monthly tenancy—Notice to quit—Validity.

The validity of a notice to quit ought not be determined on the splitting of a straw. A note a monthly tenant in Kartic 1337 requiring the land on the 1st of Pous 1337 is valid, does not require the tenant to vacate the land at the expiry of the month of Aghrayan. (*R C SUDHANSU BADINI DEBI v. NARAYAN PANDA.*) 68

—S. 106—Notice—Lessee from whom allowed to construct building—Ejectment quit—Necessity.

Where the lessee is allowed to construct the land leased, and the lease is found to be one from

T. P. ACT (1882), S. 107.

'Sending by post' in S 106, T. P. Act, must mean sending post to the tenant's proper address (*Lord Porter.*) **PRAHLADRAI CHOOREEWALLA v. COMMISSIONERS FOR THE PORT OF CALCUTTA.**

I L R. (1939) Kar. 90 = 1939 O W N 53 =

1939 O L R 42 = 43 C W N 309 =

1939 O A. 206 = 179 I C 321 = 5 E R 249 =

1939 A W R. (P.C.) 25 = 1939 A W N 223 =

C 131 = 1939 R D 151 = 41 Bom. L R. 684 =

1939 P C 11 = (1939) 1 M L J 365 (P.C.).

106—Notice to quit—Validity—Mistake in m of land.

The object of the notice under S. 106 of the Transfer of Property Act is to inform the tenant of the land from which the landlord intends to eject him. If the notice makes it quite clear to him that the landlord intends to take possession of the whole of the *jama* the notice is valid although it contains an inaccurate description of the land (*Jack and Patterson, J.J.*) **GIRIDHARI LAL MANDRA v. PURNENDU NARAYAN ROY DEB BARM.**

182 I C 8 = 11 R.C. 894 = 68 C L J 481 =

A I R 1939 Cal 291.

—Ss 106 and 111 (h)—Tenancy from year to year or from month to month—Heritability—Notice to quit served on surviving tenants and not on heirs of deceased tenants—Validity

Tenancies from year to year or from month to month created after the passing of the Transfer of Property Act are leasehold interests and are both transferable and heritable. Consequently a notice to quit served on the surviving tenants alone but not on the heirs of some of the tenants who are dead is not valid and sufficient in law to determine the tenancy (*Nasim Ali, J.*) **ANWARALI BEPARI v. JAMINI LAL ROY CHOUDHURY.**

I L R (1939) 2 Cal 254 = 43 C W N 797.

—S 106—Tenant entering into possession under deed on payment of 'nor manufacturing

If under a lease created after the T P Act, the tenant enters into possession on the basis of an oral agreement and continues in possession on payment of rent to the lessor, and the purpose of the tenancy is neither agricultural nor manufacturing, the lease must be taken to be a lease from month to month under S 106 of the T. P. Act (*Nasim Ali, J.*) **ANWARALI BEPARI v. JAMINI LAL ROY CHOUDHURY**

I L R (1939) 2 Cal 254 = 43 C W N 797.

—S 106—Term 'ordinary tenant' in Calcutta—Meaning—Nature of tenancy

Unless there is some indication to the contrary, the term 'ordinary tenant' would in Calcutta mean monthly

—S 107—Agreement to lease prior to April 1st, 1929—Need for

P. Act which
bilateral
su

T. P. ACT (1882), S. 107.

Inta hafa nsh a j... 1

—S 107—Non compliance with—If cured by
S. 53 A See T P Act S 53 A

—S 107—
year—Effect of.

An oral agreeer
of possession if
year is valid by delivery of possession for the first year
and thereafter the lessee continuing in possession with the
assent of the lessor becomes a tenant holding over under
S. 116 of the T P Act Such a tenancy is to be deemed
to be a tenancy from year to year or from month to
month under S 106 according to the purpose for which
the property is leased A tenant holding such a tenancy
has an interest for one year or one month certain as the
case may be with an accruing interest during every year
or month thereafter springing out of the original con-
tract and as parcel of it. (*Naum Ali f*) ANWARALI
BEPARI v JAMINI LAL ROY CHOUDHURY.
I.L.R. (1939) 2 Cal. 854=43 C W N. 797

—S 107—Rent deed for less than one year—Need
for registration

S 107 of the T P Act is not governed by the defini-
tion of the term "lease" in the Registration Act which
includes a Kabuhat, but by the definition in S 105 of
the T P Act.

411 A L R 490=A L R. 1939 Lah. 423
—S. 108—Joint lessors—Suit on by one alone—
Competency.

Where the plaintiff, a co proprietor, alone sued
to enforce a covenant of lease but the other co-proprie-

laying out flower garden—Lessee erecting buildings—
Mandatory injunction for demolition of buildings—
Lessor's right to

Where a lease is granted by a plot of land merely for

60 L W. 705=1939 M W N. 1163= (1939) 2 M L J 773
—S 109—Assignee of lessor—Rights of—Fresh
attornment by lessee to assignee—If necessary.

A fresh attornment by the lessee to the lessor's
assignee is not necessary under the Transfer of Property
Act nor by any law in force in the Punjab. (*Cold-*

T. P. ACT (1882), S 115.

stream, f) DAULAT RAM v HAVELI SHAH.

182 I C 533=12 R L 55=41 P L R 346= AIR 1939 Lah 49.

—S 111 (f)—Lessee accepting new grant—Effect
on former lease—Implied surrender

—S 111 (g)—Lease—Forfeiture—Notice—Neces-
sity.

According to S 111 (g) of the T. P. Act, the giving
of notice in writing is an essential condition of for-
feiture taking effect in law The act of the lessee
renouncing his character as such makes the lease only
voidable, that is, gives the lessor a right to avoid the
lease but the lessor is not entitled to take possession
until he actually avoids the lease by giving a notice as
prescribed in the last portion of S 111 (g) of the
T. P. Act (*Srinastava f*) SAHEB DIN v GAURI
SHANKAR 185 I C 25=1939 O L R 683= 1939 O A 764=1939 O W N 980= 1939 A W R (C C.) 284.

—S 111 (g) (2)—Applicability—Assertion of a
status higher than that admitted by lessor—If amounts
to denial of landlord's title.

There is no disclaimer of the title of the landlord when
the lessee merely sets up higher rights under the lease

AMAR KRISHNA
183 I C 821= 1939 O L R 563= 1939 O W N 825=12 R O 67= 1939 R D 612=A I R 1939 Oudh 257.

—S 114 A—Applicability to Punjab.
The Transfer of Property Act

STATE 41 P L R 895= AIR 1939 Lah 330

—S 114 A—Retrospective effect
The provisions of S 114 A

—S 115—Construction—Under lease—Surrender
of head lease—Right of new lessee to benefit of and rights
under under-lessee

Under S 115 of the T P Act, the surrender
of a grant of a direct con-
cession and the
surrender
of a new lease,

under, the under lease most vest in the new lessee.
There is nobody else in whom such benefit and right
can vest (*Blauvelt, C. f. and Rangnagar, f*) SULLI-
MAH HAJI AHMED v DARALESHAW
I L R (1939) Bom 144=180 L O 945= 11 R B 320=41 Bom L R 25= AIR. 1939 Bom. 98.

T. P. ACT (1882), S. 122.

to land.

An unregistered deed of gift or *dangatra* cannot create title to land in favour of the donee. (*Manohar Lall, J*) RUP NARAIN PANDEY v. SHEO SAGAR TEWARI. 180 I.C. 105=5 B.R. 312=11 R.P. 451=A.I.R. 1939 Pat 258

—S. 126—If an absolute exception to S. 10—Power to revoke on alienation—Validity See T. P. ACT, SS. 10 AND 126—GIFT.

1939 A.W.R. (H.C.) 102.
—S. 130—Absolute assignment—Life Insurance Policy—Assignment to wife of assured—Provision for reverter to assured in certain contingencies—If a absolute assignment. See INSURANCE—L. POLICY. (192

—S. 130—Applicability—Partner—Partners taking payment and giving assets in favour of others—Document Necessity See T. P. ACT, SS. 5 AND I.L.R.

—S. 130—Assignment—Depositor—Bank as future subscriber

subscriber to a chit fund conducted by a company deposited in the Bank to pay

of the subscriber in respect of the future subscriptions payable to the company and at least to the extent of the money deposited should the amount deposited not cover the total amount of the subscriptions, when the transaction on behalf of the Bank is single by a single agent, both the Bank and the company all the novation are present, and the transaction

T. P. ACT (1882), S. 130

debtor to after the the part of e credit of by way of

—S. 130—Construction—"Duly authorised agent"—Agent holding power with no authority to assign decree—Assignment of decree by agent—Subsequent ratification by principal—Retrospective validation of assignment.

A decree constitutes an actionable claim. The words "duly authorised agent" in S. 130, T.P. Act, must be

which does not give him power to assign a decree obtained by his principals, assigns that decree to a third

0—Debt—Assignment of—Interest—If

it is assigned, interest payable on it goes *Chattaramana Rao, J*) TRAVANCORE BANK SUBSIDIARY CO., LTD. v. T. N. & 1939 M.W.N. 1054=1939 Comp C. 262.

—S. 130—Debt—Assignment of part—Validity—An assignment of a part of a debt is not invalid AVANCORE NATIONAL BANK v. T. N. & Q. BANK, 1=1939 Comp C. 262

amount deposited in Bank—Assignment—Essentials of—Endorsement on back and delivery—Effect of—Receipt—If negotiable instrument

to the Bank informing the the amount to the endorsement in writing within the *Chattaramana Rao, J*) ANANTARAMAN v. T. N. & Q. BANK, LTD 759=1939 M.W.N. 1939

T. P. ACT (1882), S 137.

—S 137—Negotiable instrument—Oral assignment—Validity—Punjab

Section 137 is no bar to the transfer of a negotiable instrument otherwise than by endorsement. The Transfer of Property Act not being in force in the Punjab an oral assignment is valid in that province (*Bhidi, J*) *RAM RATTAN v GOBIND RAM*

A I R 1939 Lab 501

TRANSFER OF PROPERTY (AMENDING) ACT (XX OF 1929), S 65—Scope and effect of See T P ACT, S 84

TRESPASS See PENAL CODE S 441

TRINIDAD AND TOBAGO CRIMINAL APPEAL ORDINANCE (XXXI OF 1931) S 3—Constitution of Court of criminal appeal—Person appointed to act as Judge of Supreme Court—If can be member—Judicature Ordinance S 7—Interpretation Ordinance Ss 17 and 20

The Court of criminal appeal established under S 3 of the Criminal Appeal Ordinance of the existing Supreme Court but record the Judges of which are 4 Justice and the Puisne Judges of the who has been appointed under S 1 of the Judicature Ordinance to act as Judge of the Supreme Court is not a Puisne Judge nor is he under that with any powers beyond such as are him to act effectively as a Judge of it. He cannot, therefore be a member criminal appeal and is not capable of acting as such. Ss 17 and 20 of the Interpretation Ordinance, 1933 do not apply to the case, as they deal with the case of one

(2) LIMITATION ACT, S 10

Administration of—Proper course for trustees—Duty of testator—Duty of Court in giving directions to trustee

Where a testator after making various benefactions to

descendants other than those provided for are to be provided for out of the funds set apart for works of

into want. The trustees are left to and though some of those who make are persons who have a claim just as better than that of any other member public who is qualified to make a point of view of good stewardship the trustees would naturally have a sympathetic ear to cases of that character and might well decide that they should fall within a class

guidance as to what in the circumstances is the best course for them to pursue in giving that direction and

TRUSTS ACT (1882) S 11

guidance the Courts cannot in any way go behind the testator's will, nor direct that the trustees should follow any hard and fast rule in deciding within their discretion who should be the immediate objects and beneficiaries from time to time of the will created, but what the Court will do is to give general directions to ensure, so far as possible that the trust fund is administered properly (*Roberts, C J and Moulton, J*) *AMEENA BEE BEE v MARIAM BEE BEE* A I R 1939 Rang 347.

—Constitution of—Company—Security furnished by employee for performance of office—If trust money—Winding up of company—Right of employee to priority over other debts of company See COMPANY—WINDING UP 1938 M W N 1332

—Creation—Debtor and creditor—Agreement for payment of debt out of particular fund—Effect of—Trust in favour of creditor—If created See TRANSFER OF PROPERTY ACT, S 130 1939 M W N 1054

—Customer directing Bank to apply deposit in particular manner—If trust created See BANKER AND N 1063

—known

—CER AND

N 1066

—Trust fund—Employees provident fund constitute

pay to vendor's son on attaining majority with interest—If trust See LIMITATION ACT S 10

1939 M W N 437

) S 9—Claim inconsistent

of the Trusts Act is an provision It recognizes desiring to renounce his

interest under the trust and suggest two modes by which this can be done. It does not mean that in every case in which a beneficiary sets up a claim which can be regarded as inconsistent with the trust he loses thereby all his rights under the trust (*Zas ul Hasan and Yoke, Nuzzaman Khan v Hunter*)

: Luck 548=11 R O 289=181 I C 155=

1939 O W N 420=1939 O A 392=

1939 O L R 274=A I R 1939 Oudh 161

—Duty of trustee—Trust for payment of specified debts

Where the trustees' discretion is restricted to the

it is impos-

ny payments

Where the

fed debts in

11 of the

Rule as to

The explanation to S 11 of the Trusts Act no doubt implies that interest can be paid on debts which bear interest, but it cannot be inferred from the language used that it is incumbent on the trustees in every case to pay interest on interest bearing debts. Moreover the sentence 'unless a contrary intention be expressed' is very important and shows that the explanation is subject to the terms of the deed of trust and when it does not make a

TRUSTS ACT (1882), S. 89.

provision for payment of interest on the debts specified, the explanation cannot be invoked for purposes of

IR
1, 155=
392=

benefit

When protected—Burden of proof.

to retain the benefit unless he shows that the party

—S 95—Applicability—Guardian of minor—If trustee. See GUARDIANS AND WARDs ACT, S. 27.

(1939) 1 M L J 745

UNITED PROVINCES AGRICULTURISTS' RELIEF ACT (XXVII OF 1934), S. 2 (2)—Agriculturist—Holder of proprietary right not paying any rent or revenue or local rate.

A holder of a proprietary

1939 A L J. 47=

JJ.) SHEO RATAN SII

are grown, *prima facie*, such a plot would appear to be merely appurtenant to his house as a garden, whether that garden was adjoining his house or at a distance. The land is not used for agricultural purposes and the owner is not an agriculturist entitled to the protection of the Act

v. GANGA

—S 2 (2) (g)—Land—Enclosed compound occupied by residential house and garden

Where an enclosed compound held by a person is occupied by a residential house or bungalow and out

U. P. AGRIC. REL. ACT (1934), S. 3.

houses for servants and the open space therein is appurtenant to the residential house, the compound cannot be held to be 'land' within the meaning of the Tenancy Act and is, therefore, not land within the meaning of S 2 (2) (g) of the U.P. Agriculturists' Relief Act. (1934)

ALKA
544=
405=

A I R. 1939 All. 617.

—Ss 2 (10) and 30 (2)—Loan, meaning of—Exe-

J. MAHOMED SHIBLI KHAN v. ISH DATT DIXSHIL.

1939 A L J. 241=1939 R D 172=

1939 A W R (H C) 252=A I R 1939 All 398

—S. 2 (10) (a)—Loan—Fresh pronote after Act coming into force in respect of a prior pronote—Nature of transaction—"In substance", meaning of

Where a fresh pronote is executed after the coming into force of the U.P. Agriculturists' Relief Act, in cat-

mean in effect (Kachhpsi Singh, J.) BHIM SEN v.

RAGHUBIR SARAN 184 I C 847=1939 A L J. 798=

1939 A W R (H C) 486=1939 R D 370=

A I R 1939 All 641.

could not have

1939 R D. 171=1939 A W R (H C) 251=

A I R 1939 All 391.

—S 3 (1)—Installments—Discretion of Court.

Section 3 (1) of the U. P. Agriculturists' Relief Act clearly gives a discretion to the Court not to allow

if it considers that there are

be allowed. (Zia ul Hassan

LALTA v. AVADH NARESH

184 I C 443=12 B O 121=

1939 O W N. 920=1939 O L R. 625=

1939 A W R (C C.) 222.

—S 3 (2)—Creation of charge under—V for purposes of—Fair rate.

U P AGRICULTURISTS' RELIEF ACT (1934), S 3

In order to arrive at the value of the property to be

—S 3(4)—If overridden by S 7 of the United Provinces Encumbered Estates Act. See UNITED PROVINCES ENCUMBERED ESTATES ACT S 7 AND U P AGRICULTURISTS' RELIEF ACT, S 3(4)

1939 O W N 754

—Ss 4 and 30—Future interest—If to be on principal amount only

The language of S 30 of the U P Agriculturists' Relief Act is that the interest is to be paid on the loan. Hence a creditor would not be entitled to future interest from the date of the decree on the consolidated amount principal and interest on that date but only to interest

—S 4 U P of the Agriculturists' Relief Act provides that the rate granted for future interest should not exceed a certain rate. It is not stated in the section that the rate awarded should attain to the rate mentioned. The Courts have a discretion in this matter. (*Bennet and Verma JJ*) MUKAT LAL v RAGHURAJ SINGH

1939 A W R (H C) 837—1939 E D 609—
1939 A L J 1049

—S 5—Applicability—Decree for costs.

MAHA KALI JI v KALI PRASAD
1939 E D 104(1)—1939 A L J
1939 A W R (H)

—S 5 (1) Proviso—Scope of—If can payments already made under a final decree

The proviso to sub S (1) of S 5 of the U P

SHYAM LAL
1939 A

—S 5 (2)—Final Court—Interference in revision

U P AGRICULTURISTS' RELIEF ACT (1934), S 30

In view of S 5(2) of the U P Agriculturists' Relief Act, only one appeal is allowed and a second appeal therefore cannot be entertained. But a second appeal

—S 7—Applicability—Suit on account for goods sold

S 7 of the U P Agriculturists' Relief Act refers only to suits for recovering an unsecured loan against an agriculturist. For the purpose of a loan there must be an advance. In the case of sale of goods it cannot be said that there is an advance. The goods are not advanced as a loan, but they are sold and as such S 7

—S 7—Applicability—Transactions entered into province

The Provincial Legislature being only empowered to make laws for the peace and good government of the territories for the time being constituting that province the operation of the U P Agriculturists' Relief Act, would be *prima facie* confined to the United Provinces, and its provisions can not have any operation outside the province so as to protect the agriculturists of the province from the extra provincial consequences of contracts that they might enter into with others.

—S 7—Proviso—Clause for payment in Delhi—

the lower Court held that as defendant P, the suit should be instituted in the whose jurisdiction the defendant resided, P Agriculturists' Relief Act, and return

It is further held that the Delhi P Act was not applicable to the suit. LAL LAL BALDEO
939 Lah 498

—S 7—debtor under as regards the the parties as owner to be to this extent the yearly rests and Balpal,

U. P. AGRI. REL. ACT (1934), S. 30.

claim.

Before a debtor can be given the benefit of S. 30 of the United Provinces Agriculturists' Relief Act it is essential that he should prove that he or his predecessor in interest was an agriculturist at the time of the loan as well as when the claim is made. (*Hamilton and Bennett, JJ.*) PHOOL CHAND MISRA 183 I.C. 517 = 12 R.O. 33 = 1939 A.W.R. (H.C.) 11 = 1939 R.D. 465 =

— S. 30—Scope of—Change into simple interest—Powers of Co

There is no provision in S. 30 of the Agriculturists' Relief Act which entitles a

— S. 30—Suit on promissory note representing balance of a mortgage transaction—Power of Court to take into consideration earlier loan.

anterior mortgage loan. (*Bennet and Verma, JJ.*) RAMANAND MISIR v. RAM HARAN CHAUBE. I.L.R. (1939) All 396 = 182 I.C. 330 = 12 R.A. 18 = 1939 A.W.R. (H.C.) 209 = 1939 R.D. 140 = 1939 A.L.J. 189 = A.I.R. 1939 All 331

— S. 30 (2)—Applicable for the price of a share in a AGRICULTURISTS' RELIEF A 30 (2)

— S. 32—Applicability—Does not apply to mortgagor at the time of the loan. S. 33 of the U. P. Agriculturists' Relief Act does not

— S. 33—Suit for accounts under—Appeal. See C. P. CODE, S. 96—APPLICABILITY. 1939 A.W.R. (H.C.) 105.

— S. 33—Suit under, in respect of successive mortgages—Relief, if could be given. See USURIOUS

U. P. ENCUM. EST. ACT (1934)

(1), PROV (1), EXPL. AND U. P. RELIEF ACT S. 33.

1939 O.A. 756 = 1939 O.W.N. 977 under—Valuation.

3 of the United Provinces Agriculturists' Relief Act for account of money lent or

advanced to the agriculturist. Such a suit, therefore, has to be valued in accordance with the provisions of R. 28 (3) of Ch. XX of the rules framed by the Allahabad High Court under the Suits Valuation Act (1913) it must be between Rs. 100 and 500 irrespective of the amount that may be due (*Iqbal Ahmad and Bajpai, JJ.*) TARA

— S. 114 (a)—Liability to tax on circumstances and property—Deciding factor.

The mere residence within the rural area is sufficient for the purpose of the powers conferred on the Board to impose the tax on under S. 114 (a) of the U. P. Income Tax Act, 1918. (*Bennet and Verma, JJ.*) DUN v. H. TROTTER. 1939 A.W.R. (H.C.) 218 = 1939 A.L.J. 161 = A.I.R. 1939 All 388.

UNITED PROVINCES ENCUMBERED ESTATES ACT (XXV OF 1934)—Appeal by creditor

— Other creditors—If necessary parties

Where one of the creditors has preferred an appeal when his claim is rejected by the special Judge, it is not

— Rules—R. 6 and C.P. Code, O. 22—Applicability of O. 22 to proceedings under United Provinces Encumbered Estates Act—Death of a creditor—Failure to

representative within time—Effect. of R. 6 of the rules framed by the Local under United Provinces Encumbered Estates

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Bajpai, JJ.) TARA CHAND v. COLLECTOR OF ALIGARH

— Rules—R. 6 and C.P. Code, O. 22—Applicability of O. 22 to proceedings under United Provinces Encumbered Estates Act—Death of a creditor—Failure to

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representative within time—Effect. of R. 6 of the rules framed by the Local under United Provinces Encumbered Estates

— Rules—R. 6 and C.P. Code, O. 22—Applicability of O. 22 to proceedings under United Provinces Encumbered Estates Act—Death of a creditor—Failure to

77. 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046 1047 1048 1049 1050 1051 1052 1053 1054 1055 1056 1057 1058 1059 1060 1061 1062 1063 1064 1065 1066 1067 1068 1069 1070 1071 1072 1073 1074 1075 1076 1077 1078 1079 1080 1081 1082 1083 1084

" " " " " T. AOT (1934), S. 4

Mekta, J W QUARIM ALI v.
1938 A W.R (B R) 390
Landlord—Mortgagee, if can claim

... of the failure to follow the mandatory provisions of O 32, R 3, C P Code, necessarily vitiates the whole process so far as the concerned (1)

A person who is recorded as a mortgagor, if can claim benefits of Act

A person who is recorded as g m n + = = f .

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the date he pays the decretal amount of the pre-emption decree. Where in respect of a sale prior to the coming into force of the H. P. Encumbered Estates Act, 1880, the

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18

—§ 4—Application by an younger brother of a joint Hindu family—If defective

Where an application under S 4 of the United Provinces Land Revenue Act, 1901, is made for the purpose of obtaining a certificate of title in respect of land in the United Provinces, the application shall be made to the District Officer, and the District Officer shall, if he is satisfied that the applicant is entitled to the certificate, issue the certificate to the applicant.

name in khirwat as consolation—If makes her a proprietor—If entitles her to apply under S 4

TL L L₂ 0 A L L₂ A L

1939 A W R (R E) 252

—S 4—Application by two persons together—Each

transfer or partition and as such is no
and is not competent to apply under S

Encumbered E
M) BABOO F

1939 6

$$\text{---} \rightarrow 2(g)$$

max plot in the

As regards a definition of who is a landlord, the emphasis is on a mahal so far as the proprietorship of a specific share is concerned otherwise there is a reference to the proprietorship of specific plots. The holder of a miscellaneous *masi* plot in the city of Lucknow who pays no local rate is not a landlord with the exception of S 2 (g) of the Encumbered Estate Act. The provision has been made for such persons and Courts are not at liberty to subvert the Act.

... as they formed one unit of a joint
no members of a separated
ined together, merely to come
landlords as defined in S 2

—vs 4 and 11—Application objected to after
decree—Revision—Interference—Readiness to amend—

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action

U. P. ENCUM. EST. ACT (1931), S. 4

so far taken by the Special Judge Where the applicants are ready and willing to make the necessary amendments, they should be permitted to do so (*Marsh, S.M. and Mehta, J.M.*) KAGHURAJ SINGH v. SANT BUX SINGH 1939 B.D. 320=1939 A.W.R. (B.R.) 261

—S. 4—Application under—Amendment on creditor's objection—Stage.

Where on an objection by a creditor as to the non-inclusion of some members of the family in an application under S. 4 of the Encumbered Estates Act, the applicants apply to amend their application after an order for publication under S. 11 of the Act it is not made at

—S. 4—Application under—Combination of several units on account of joint debts—Duty as to declaration of jointness or otherwise—Proper procedure

As the rules framed under S. 4 of the U. P. Encumbered Estates Act stand, all to state that he either did or Hindu family. Under the maintained that if several units are not joint *inter se*, no of these units as regards making a declaration whether each of them is joint or separate between himself and his sons In such cases it would be safer to apply under S. 4 for each unit, so far as their own descendants are

1939 A.W.R. (B.R.) 116

—S. 4—Application under—Concealment of existence of minor sons—No attempt to correct—Effect.

Where an applicant under S. 4 of the U. P. Encumbered Estates Act conceals the existence of minor sons and makes no attempt to correct the error before it is pointed out by the creditor, it cannot be allowed to be corrected thereafter (*Bomford, S.M. and Mehta, J.M.*)

—Ss 4 and 8—Application under S. 4—Disclosure as to extent of property and debts—Stage at which to be made.

An applicant under S. 4 of the United Provinces Encumbered Estates Act is not bound at that initial stage to give an exhaustive list of his properties. He is only to show that *prima facie* he is entitled to apply. The obligation to make a full disclosure arises stage is reached at which S. 8 comes Then it is that the fullest disclosure as to

—S. 4—Application under—Non disclosure of existence of grandsons—If can be remedied—Accidental omission—Circumstances.

U. P. ENCUM. EST. ACT (1931), S. 4.

DEEPCHAND v. KAMAL SINGH,

1939 O.W.N. 329=1939 R.D. 183=

1939 A.W.R. (B.R.) 188.

—S. 4—Application under—Non disclosure of existence of members of joint family—Effect—Application to amend beyond time—Acceptance—Policy of the Board

Failure to disclose the existence of members of the joint Hindu family in an application under S. 4 of the U. P. Encumbered Estates Act, militates against its mandatory provisions and of the rules made on that section under S. 54 of the Act As the Board is strict in having the application amended within time, an application to amend made beyond time cannot be accepted, and more so when the omission was fraudulent (*Marsh, S.M. and Mehta, J.M.*) LACHMI CHAND v. HEMA 1939 A.W.R. (B.R.) 92=1939 R.D. 398=

1939 A.L.J. (Supp.) 78.

—S. 4—Application under—Non inclusion of all members of the family—Effect.

Where all the members of the family are not included

—S. 4—Application under—Non inclusion or mention of son living separate but not partitioned—If fatal.

Where a son had not partitioned from his father but

either mentioning or joining such a son is clearly defective (*Marsh, S.M. and Mehta, J.M.*) MANGAL AHIR v. BIKARMAJIT SINGH.

1939 A.W.R. (B.R.) 107=

1939 R.D. 435=1939 A.L.J. (Supp.) 67.

—S. 4—Application under—Objections—Stage up to which could be taken.

The Board would refuse to invalidate applications of the United Provinces Encumbered if the proceedings before the Special Judge the stage of decrees being passed under S. 14 of the Act. Till that stage is reached objections to applications under S. 4 could be considered. (*Darling, S.M. and Mehta, J.M.*) PRAG DASS v. HAFIZ UDDIN. 1938 B.D. 947=1939 A.W.R. (B.R.) 85

—S. 4—Application under—Validity—Mistakes in parentage—If can be corrected.

—S. 4—Defective application under—Amendment—Late stage—Propriety

Where an application under S. 4 of the United Pro-

U. P. ENCUM. EST. ACT (1934) S. 4.

Where an applicant un-
ces Encumbered Estates
the existence of a minor

U. P. ENCUM. EST. ACT (1934), S. 4

renders application void

A creditor who has been discharged has no locus

family members cannot by analogy be extended so as to make it obligatory on an applicant under S. 4 to file a com

Ss 4 and 6—Failure to add minor son—Amendment—Stage

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ditor calls atten

idol—Proper remedy—Resort to Encumbered Estates

to have gone to the Civil Court first, to obtain a
it's property is
ly under S 4 of
worded leaves
ining into the
nst the estate
v. LACHMI
1939 E D 406

S 4 Rule 4b—Non-compliance with provisions

4 of the U. P.
comply with the
l proviso of that
an sufficient time
rder inadvertently
with reference to
e by the Board in
ers under S 46

S 4—Failure to disclose existence of members of the applicant's family—Order under S. 6—Cancellation in revision

Where an applicant under S 4 omits to disclose the existence of all the members of his family, he fails to

(*Darling, S M and Mehta, J M*) KHARAG SINGH v. GAJRAJ SINGH 1939 A W R (B R) 150= 1939 O W N 116=1939 E D 32.

S 4—Non-joinder of a brother not traceable—If renders the application defective.

A member of joint family when he goes out of a pro-

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nder

ed to be given—Amendment on the ground of mistake—Propriety

Where an applicant failed to state whether the family was joint or not and also to disclose the existence of a

without impleading him is not a defective one. (*Maria, S M, and Mehta, J M*) SHEO PUJAN v RAM GOPAL 1939 E D 596=1939 A W R (B R) 266.

as to application—

pplication made under
umbered Estates Act
under S 14 of the
n after an order for
een made (*Mehta,*
PAL SINGH v HAR
W.R (B R) 84 (1)=
1938 E D 946

except one—Omitted name, if can be put in at that stage

U. P. ENCUM. EST. ACT (1931), S. 4.

be upheld. (*Mhta, S.M. and Harper, J.M.*) MATA PRASAD v. SHLO PRASAD 1939 A.W.R. (B.R.) 30 = 1939 R.D. 412 (1)

—S 4 and E. 1 of rules made under S 54—*Object of R. 1—Failure to file khawat of one of the mahals—Minor applicant under S 4—Defect, if can be overlooked.*

The mandatory character of R. 1 of the rules framed under S. 54 of the Encumbered Estates Act is only the result of the urgent necessity of having on record at the earliest possible stage of evidence showing that the applicant is entitled to claim the benefit of the Act, with a view to prove his *bona fides* by a full disclosure of his property. But where the applicant is a minor, fact that the khawat of one of the mahals was not filed could be overlooked, and it can be permitted to be filed later on. (*Darling, S.M. and Mehta, J.M.*) PAR MESHWARI DIN v. MANDI SINGH 1939 R.D. 29 = 1939 O.W.N. 134 = 1939 A.W.R. (B.R.) 151

—Ss 4, 6 and 46—*Provisions of S. 4, if mandatory—Failure to comply with—Effect—Order S 6 on such application—Setting aside in retrier*

ed by the Board under its revisional jurisdiction under S. 46 (*Mhta, S.M. and Harper, J.M.*) RAGHUNANDAN CHAUBE

—S 4—*Right on the date when Act came into force.*

Where an applicant under S. 4 of United Provinces Encumbered Estates Act is not a landlord within the meaning of the Act on the day it came into force, he is not entitled to its protection. (*Darling, S.M. and Mehta, J.M.*) PRAG DASS v. HAFIZ UDDIN. 1939 A.W.R. (B.R.) 85 = 1938 R.D. 947

—Ss 4 and 6—*Validity of application under S. 4—If can be gone into by Special Judge*

The jurisdiction of the Special application under S. 4 of the U. P. Act has been forwarded under limited to matters provided of the Act. The question under S. 4 of the Act is a valid one or not is a matter within the exclusive jurisdiction of the Collector and cannot be gone into by the C.J. and Radha Krishna, J.) v. ATHAR ALI. 1939 A.W.R. (C.C.) 184 I.C. 3

12 R.O. 101 = 1939 R.D. 582
—Ss. 4 (1) and 9 (4)—*Failure to comply with provisions of S. 9 (4)—Effect.*

In view of the statutory provision in S. 9 (4) of the Encumbered Estates Act, the omission of the names of persons constituting the joint family from whom the

in objecting to—If can be gone into.

Where a creditor knowing that a debtor has been granted an extension of time owing to illness, objects to

Y. D. 1939—72

U. P. ENCUM. EST. ACT (1931), S. 7.

such an extension after considerable delay, it become impossible to re-open the question as to the debtor's illness at the particular time. (*Bomford, S.M. and Mehta, J.M.*) RAM GOPAL v. RAJA RAM. 1939 A.W.R. (B.R.) 1 = 1939 O.W.N. 190 (2) = 1939 R.D. 76.

—S 4 (4)—*Extension of time on the ground of illness—Collector's act, if unreasonable*

Where the Collector on the strength of a medical certificate as to the illness of a debtor at a time when he

1939 O.W.N. 190 (2) = 1939 R.D. 76.

—S 4, Proviso (2)—*Non compliance with—Failure to disclose existence of member of joint Hindu family—Effect*

it is too late to eject if an S. 6 the Board 46. (*Darling, J. KHAN.*) 1938 R.D. 923.

—S 6—*Special Judge—Powers—If can question entertainment of application under S. 4*

the Collector. (*Hamilton and Yorke, J.J.*) GANGA BAKSH SINGH v. MS. POHOOF KUIR.

14 L

1939 C

—S 7—*Applicability—Claim for damages for breach of contract—Measure of damage specified in the contract—If can be stayed.*

amount is uncertain and depends on the discretion of the Court, and as such, a suit in respect of

A.I.R. 1939 All. 444

—S 7—*Applicability—Debts due from landlord as tenant.*

An intention to deprive the landlord of the benefits of S. 7 of the U. P. Encumbered Estates Act in respect of debts incurred by him as tenant cannot be read into the

referred to in any public or t be restricted (*Bennett, J.*) O.W.N. 908 = 12 R.O. 119 = O.L.R. 622 =

1939 A.W.R. (C.C.) 212.

—S 7—*Applicability—Order under S. 6 of the Encumbered Estates Act—Subsequent decree for damages in*

U P ENCUM EST ACT (1934), S 7

suit under S 44 of the Agra Tenancy Act—Execution, if can be stayed

Where after the passing of an order under S 6 of the U P Encumbered Estates Act, the debtor is sued under S 44 of the Tenancy Act as a trespasser and a decree for damages obtained it cannot be regarded as a debt incurred by him as a landlord and as such he is not protected by S 7 of the Encumbered Estates Act against these proceedings. (*Marsh, S M*) **LAKENDRA SINGH v RANI DANKUR**
1939 E D 227 (1)=
1939 A W R (B R) 69 (2)=

1939 O W N 418=1939 A L J (Supp) 56

—S 7—Attachment in execution and entrustment to *suparddar*—Subsequent order under S 6 of Encumbered Estates Act—Effect—Dismissal of application under Encumbered Estates Act—If restores attachment—Decree holder, if and when entitled to fresh execution

Where certain property was attached in execution and entrusted to a *suparddar* and later on an application under the Encumbered Estates Act is transferred to the Special Judge under S 6, by reason of S 7 the attachment becomes null and void. Though the application under the Encumbered Estates Act is subsequently dismissed, that could not have the effect of reviving the attachment. Hence if the decree holder wants to succeed in a fresh execution he has to show that the originally attached property was restored to the judgment debtor. Else his further execution application would not be maintainable. (*Darling S M and Mehta J M*)
BOHRA BHOJRAJ v KANAL SINGH
1939 A W R (B R) 15=1939 E D 307

—S 7—Court passing decree directed to stay execution under—Power to recall certificate for execution issued to another Court

Where a Court which has passed a decree is legally directed by virtue of S 7 of the United Provinces Encumbered Estates Act to stay its execution it should recall any certificate for the execution of that decree which it may have issued to any other Court. (*Bennet Ismail and Verma J J*) **SHIVA PRASAD GUPTA v GOKUL CHAND**
I L R (1939) All 131=179 I C 856=

1939 O L R 74=11 E A 378=

1938 A W R (H C) 853=1939 O W N 94=

1938 R D 951=1939 A L J 13=

A I R 1939 All 97 (F B)

—S 7—Pendency of proceedings under the Act—Order of transfer in execution of decree—Validity

Where the proceedings under the U P Encumbered Estates Act were pending a transfer of the property of the applicant
the officer in
of Sales Ac
Mehta J M

—S 7

B 3 (4)—S

Letter Act

S 7 of United Provinces Encumbered Estates Act in its present form of the United Provinces overrides it. (*H*)
LAL v CHHATT

1939 A

—S 7—Scope
any disability to take proceedings

Though S 7 of the U P Encumbered Estates Act does not in terms say that the suits or proceedings mentioned therein should be against the landlord, proceedings mentioned must necessarily be

U P ENCUM EST. ACT (1934) S 9

landlord. The legislature prohibited proceedings against the landlord but the landlord himself is not under any such disability. (*Collister and Bapna, J J*) **RANBIR PRASAD v SHEOBEARAN SINGH** 1939 A L J 555= 1939 A W R (H O) 581=1939 E D 440= A I R 1939 All 619

—Ss 7 and 2 (a)—Subject of partition among joint Hindu Family members—If a 'debt'—Act, if applies—Execution of partition decree can be stayed under S 7

members to make a payment to another for purposes of adjustment of their respective shares the payment to be so made is not a debt to which the Act would apply and as the proceedings under the Encumbered Estates Act would not apply to this particular amount due, execution in respect of this amount could not be stayed under S 7.

—S 7 (1) (b)—Applicability—Suit for dissolution of partnership and rendition of accounts

A suit for dissolution of partnership and rendition of accounts cannot be deemed to be a suit in respect of any debt within the meaning of S 7 (1) (b) of the U P Encumbered Estates Act. (*Iqbal Ahmed J J*) **MADHO PRASAD v MAHAN LAL** 182 I C 825=

11 E A 652=1939 A W R (H C) 179=

1939 R D 119=1939 A L J 249=

A I R. 1939 All 328

—S 9—Amendment of written statement—Additional claims—If can be allowed. See C P CODE O 6 R 16 AND U P ENCUMBERED ESTATES ACT, S 9 1939 O W N 755

—Ss 9 and 13—Failure to file claim by creditor within time—Extension of time—Debt not mentioned in application under S 4—Deliberate omission—Inference of intention

The provisions of S 13 of the United Provinces Encumbered Estates Act are very drastic and offer great scope to a dishonest debtor to escape the payment of a debt by the simple device of omitting to apply under S 4 and his reliance on S 13 of the United Provinces

The advantage resulting to the debtor by the creditor within the time is very great and wherever the debt is not explained in the written statement of the debtor is not explained

fair pre-deliberate
furnished by
in those
extension
Srivastava

U P ENCUM. EST. ACT (1934), S 9.

Necessity—Reasons—Delay in filing written statement by creditor—Power of Court to extend time—S. 18 of Limitation Act, if applicable to proceedings under the Act.

S 13 of the U P. Encumbered Estates Act provides a very drastic penalty. It deprives the creditor of the money honestly lent to a laudatory of a Court to see that the Act are strictly and literally

U P. ENCUM. EST. ACT (1934), S 14

—S. 9 (3)—*Permission to file written statement out of time—Debtor not giving creditor's correct address—Sub-S. (3) of S 9 when comes into operation*

Where a debtor failed to give a creditor's correct address and consequently the copy of the notice sent to him was returned back and the debtor's name was

that because of the fraud of the debtors, he was kept out of knowledge, the period for his making the application should be computed according to S 18 of the Limi-

The notice published in the gazette according to S. 9 (1) of the Encumbered Estates Act is clearly meant for all creditors whether their names appear in the applica-

—Ss. 9 (2),
as time barred un-
der that debt is to
Court fee payah
ART. 11—APPLI

1938 A W R (CC) 136.

—S. 9 (3)—*Filing of written statement—Time allowable—Special Judge's power with reference to*

According to the provisions of S 9 (3) of the Encumbered Estates Act, a creditor if he wishes to file a

—S 10 (4)—*Discretion under—Refusal by special Judge to exercise—Appellate Court if can exercise.*

The appellate Court has the same discretion under the Encumbered Estates Act where the latter has it is open to the appellate Court to admit the document. (Mulla, J.) RAMA

1939 A W R (H.U.) 444=1939 E D 400=
1939 A L J 685=A I R 1939 All 646.

—S 13—Order declaring debt to be deemed to be

in respect of certain debts—Sub-
application under S. 4—If main-

have been given under S. 14 of the

meal. So where decrees have been passed as regards certain debts thereby making it impossible to raise any

same bar must
"Chits, S M and
GH v. MAHESH
I O W N. 81=
7 B. (B E) 83.
ing with decree
promiss (ii) of

14 (4) of the
Act and apply-
Act, is by

U P ENCUM EST ACT (1934), S 14

very provisions of S 14 read with S 15 empowered to interfere with the findings of the Court which passed the decree in certain specific circumstances and this power could not be taken away by the application of proviso (ii) to S 3 (1) of the *Hasan and Yorke, JJ*
RAM

1939 O A
19
11 R

—S 14 (4) (b) and 15—Powers of a special Judge in respect of a decree—Decree on loan after applying provisions of Usurious Loans Act as it stood on date of decree—Subsequent passing of United Provinces Usurious Loans (Amendment) Act—Claim for determination of amount due—Provisions of the United Provinces (Amendment) Act, if can be applied

A loan which has been the subject of a decree passed by the Court under the Usurious Loans Act as it stood on that Court

when it comes on before a special judge for determination of the amount due under Ss 14 (4) (b) and 15 of the United Provinces Encumbered Estates Act, he cannot give effect to the United Provinces Usurious Loans (Amendment) Act for it would be giving retrospective effect that Act inconsistently with the provisions of S 1, sub Cl, (2) of that Act itself (*Zia ul Hasan and Yorke, JJ*) *BAIJNATH SINGH v TULSHI RAM*

1933 O W N 385=181 I C 81=
1939 O A 370=1939 A W R (C C) 73=
1939 O L R 233=1939 R D 255=
11 R O 276—A I R 1939 Oudh 181

—S 14 (5)—What is contemplated by—Meaning of words "any contract made in the course of the transaction"

Sub-S (5) of S 14 of the United Provinces Encumbered Estates Act contemplates not only a statement or settlement of account, but also a contract subsequent to the original transaction provided that the statement or settlement of account or contract is made before 31st December, 1916. The words "course of the transaction" means a contract made at the time because the very idea of the transaction was that the Legislature had been the result of every debt that had accumulated in 1916 should be treated as principal nothing was easier for them than to say so in clear and unambiguous terms (*Thomas C J and Zia ul Hasan, JJ*) *SUNDER LAL v MST KANIZ ZOHRA BEGAM*

1939 O W N 521=1939 A W R (C C) 117=1939 O L R 233=1939 R D 255=11 R O 276

U P ENCUM. EST. ACT (1934), S 35

Where an usufructuary mortgage is extinguished by the passing of a simple money decree under S 14 (7) of the Encumbered Estates Act, the mortgagors are entitled to be placed in possession of their property as laid

1939 R D 246

—S 15—Special Judge proceeding under—Decree, how far to be accepted—Award of interest—Powers

Where there has been a decree, a Special Judge proceeding under S 15 of the United Provinces Encumbered Estates Act has to accept the findings of the Court which passed the decree except in so far as they are inconsistent with the provisions of S 14 that is he has to see whether the provisions of S 14 has been complied with by that Court in passing the decree. The fact that three interests namely that on the loan itself together with the pending life and future interest exceeds the unpaid principal, is no ground for reducing it (*Hamilton and Yorke, JJ*) *I AM SAGAR PRASAD v MST SHAYAMA*

14 Luck 521=179 I C 630=1939 O A 174=
1939 O L R 67=1939 R D 67=11 R O 196=
1939 O W N 118=1939 A W R (C C) 35=
A I R 1939 Oudh 75

—Ss 18 and 35—Recovery of possession of mortgaged property—Policy of law

When once properties are released from a mortgage the collector should order the delivery of possession of the mortgaged property to the mortgagor (*Mahesh, S. J.*) *RAM PRASAD v BABU RAM*

1939 A W R (B R) 124 (1)

—S 18—Scope and effect of—Finality of decree under S 14

The effect of S 18 of the U P Encumbered Estates Act is that before the old rights are extinguished by the decree under S 14 of the Act, the creditor is allowed a right of appeal or revision but when once the period of limitation therefor has elapsed the decree becomes final and is the last word on the subject of the legal relation

—Ss 18 and 35—Stay of proceedings under—Chief Court if an order

The jurisdiction exercised by the Court of the Collector or of the sub divisional officer under Ss 18 and 35 of the

1939 O W N 521
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gors to possession—Proceedings

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United Provinces Encumbered
gors are entitled to be given

U. P. ENCUM. EST. ACT (1934), S. 45

possession of the mortgaged property and the Collector is bound to deliver possession and as such proceedings therefor cannot be stayed. (*Marsh, S.M.*) TARA CHAND v. TIKA RAM. 1939 R D 277 (1) = 1939 A.W.R. (B.R.) 254.

—Ss. 45 and 46—*Revision where remedy of appeal is open—Board if and when will interfere.*

The Board will not allow any party to extend the period of appeal fixed under S. 45 of the Encumbered Estates Act, by seeking to come by way of revision in a matter which is appealable. But when by way of appeal or revision or otherwise, the wrong exercise of a jurisdiction by a Collector is brought to the notice of the Board, it is its duty to interfere to set it aside. (*Darling, S.M. and Mehta, J.M.*) DEVANDRA PAL SINGH v. HARENDRA PAL SINGH. 1939 R D 30 = 1939 A.W.R. (B.R.) 173.

—Ss. 45 and 46—*Revision where right of appeal is open.*

Where it is open to a party to appeal against an order, the Board will not ordinarily permit him to extend the period of his appeal under S. 45. (*Darling, S.M. and Mehta, J.M.*) UDDIN.

—S. 46—*Collector's order under S. 6—Successor if can set aside—Proper procedure.*

A Collector has no power to set aside an order passed by his predecessor under S. 6 of the Encumbered Estates Act. He should only recommend to the Board of Revenue that the order should be cancelled by the Board, who alone can do so under S. 46 of the Act. (*Marsh, S.M. and Mehta, J.M.*) DHARMA v. BADLOO. 1939 A.W.R. (B.R.) 79 = 1939 R D 269 (2) = 1939 A.L.J. (Supp.) 74.

—Ss. 46 and 14—*Powers of Revision—When can arise—Orders under S. 14—No appeal—Revision, if list.*

According to S. 46 of the U. P. Encumbered Estates Act, the Courts empowered to hear appeals can exercise their revisional powers only in those cases which are pending. Where orders had been passed under S. 14, the Collector has no right of appeal. (*Mehta, J.M.*) ALI v. BHARI. 1939 A.W.R. (H.C.) 487 = 1939 R D 371 = 1939 A.L.J. 673 = A.I.R. 1939 All 648.

—S. 46—*Scope of revisional jurisdiction of the*

Board. (*Mehta, J.M.*) DUTTA v. BHARI. 1939 A.W.R. (H.C.) 487 = 1939 R D 371 = 1939 A.L.J. 673 = A.I.R. 1939 All 648.

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U. P. LAND REVENUE ACT (1901), S. 36

The amendments of the U. P. Land Revenue Act by U. P. Act I of 1936 and III of 1938 do not empower the settlement officer or any one working under him to revise the rent of non-occupancy tenants. (*Marsh, S.M.*) SADIQ ALI v. Mst. BHAGWATI. 1939 R D 566 = 1939 A.W.R. (B.R.) 242.

—S. 23—*Patwari—Disciplinary action against—Procedure—Grounds—Father helping son, if a valid ground.*

In the matter of a dismissal of a Patwari, the rules which govern the punishment of government servants in general must be observed carefully—charges must be framed and a clear finding come to on each charge. Where this procedure is not followed the dismissal would be set aside. Where a patwari is complained against on the ground that he is allowing his father to interfere with his work and that accounts are being written by the father, there is nothing in those charges to warrant any action being taken as against the Patwari. (*Bomford, S.M. and Mehta, J.M.*) MAZHAR HUSAIN KHAN v. EMPEROR. 1939 A.W.R. (B.R.) 2 = 1939 R D 79.

—S. 24—*Appointment of patwari—Proper procedure.*

(*Per Marsh, S.M.*)—A vacancy to a patwarship cannot be filled up without any sort of proclamation.

—Ss. 34 and 39—*Application for mutation—New relief—Rectification of incorrect entry—If can be allowed.*

According to Ss. 34 and 39 of the Land Revenue Act, the remedies are different under Ss. 34 and 39 of Land Revenue Act and should be kept separately in view. (*Mehta, J.M.*) CHANDRIKA PRASAD KUNWARI v. BALBHADDAR NARAIN MAL. 1939 R D 316 = 1939 A.W.R. (B.R.) 285.

—S. 34—*Mutation—Deed not acted upon for a long time—If can form the basis for mutation.*

When a person seeks mutation of his name on the basis of a deed, which has not been acted for such a long time as 19 years, it should not be allowed to be used as a lever for getting a mutation made if any party is objecting to it. (*Marsh, S.M. and Mehta, J.M.*) RAM LAKHAN v. GOMTI PRASAD. 1939 R D 521 = 1939 A.W.R. (B.R.) 221.

—S. 36—*Fixation of rent under—Effect—Claim for beshi rent for 'sugar cane cultivation'—If open in a suit for arrears of rent.*

Where by an order under S. 36 of the U. P. Land Revenue Act the rent of an expropriatory tenant has been fixed, and there is no provision therein for extra rate for sugar cane cultivation, the landlord may, in a suit for enhancement of expropriatory rent, claim such extra rate, but he cannot do so in a suit for arrears of rent. (*Bennet and Verma, J.J.*) PAUHAN BISHU.

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—S. 36—*Fixation of rent under—Effect—Claim for beshi rent for 'sugar cane cultivation'—If open in a suit for arrears of rent.*

U P. LAND REVENUE ACT (1901), S. 36.

NATH JATI v RAM LAGAN JATI.

1939 R D 231=1939 A W.R. (H O) 313=

183 I O. 471=12 R.A. 143=

1939 A L J. 617=A.L.R. 1939 All 500.

—S 36—Mortgage of Six plots prior to Agra Tenancy Act of 1901—Sale of Proprietorship rights in

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mortgage the mortgagor can apply under S 36 of the Land Revenue Act within 6 months of *dakhil dihani* and get the area demarcated and rent assessed, and on so doing the tenants who are recorded as tenants of *Sir* have no right to claim any rights higher than that of sub tenants formerly of *Sir* and subsequently of exproprietary holding (*Darling, S M and Mehta J M*)
 LEKRAJ AHIR v TENGAR SINGH 1939 R D 21=

1939 A W.R. (B R) 135

—S 36—*Sir land*—Mortgagor retaining possession—*Suit under S 36*—Starting point of limitation

So long as a mortgagor does not give up possession

in that what was once joint *sir*, is now broken up into *sir* and exproprietary holding and if the expropriator is found out of possession within 6 months, in that case he would lose his tenancy rights altogether. Till those rights are carved out, they will remain in abeyance in all cases in which a certain proportion c mechanically transferred by transferee share (*Mehta J M*)
 BALDEO L MED ZAKARIA 1939 R D 168=

1939 f

—S 39—Correction case—Scope of—Determination of the nature of land—Proper remedy—Entry dating back to settlement—If can be disturbed

In a correction case the Revenue Courts are not concerned with the question of the determination of the nature of a plot or as to whether a portion thereof. These are matters which are agitated under Ss 121 & 123 of the Act. When entries have come down settlement (i.e.) 1324 they are not to

on patta—Alteration—If within scope of proceedings

Where there is a patta and it has been acted upon and the entries have been made on that basis, the cir-

U. P. LAND REVENUE ACT (1901), S. 111.

succession or transfer, an old standing cause of action, which has remained unacted upon for a long time, will not be availed of except after producing an order of a Revenue or Civil Court of a more recent date implementing that order. (*Marsh, S. M. and Mehta, J M*)
 Datta v ...

the Land Revenue Act is not by reason of the Board's circular 56 A/Judl 668-B of Dec 10, 1937, prevented from asking for some evidence as to the authority of the widow to adopt. The mere production of the deed of adoption would not be enough in such a case (*Mehta, J M*)
 CHANDRIKA PRASAD KUNWARI v. HALEH-DAR NARAIN MAL. 1939 R D 316=

1939 A W.R. (B R) 285.

—S 40—Mutation, right to—Long recorded possession of co sharer—Effect—Transferee from such co sharer—Rights

In the face of a long recorded possession of a co-

As such any transferee from such a co sharer is clearly entitled to mutation, if he asks for it. Any one who alleges that the transferor had no right to the property standing in his name as recorded in the khewat is at liberty to establish his contention in the Civil Courts. The

—S 40—Mutation—Statement as to payment of rent—If sufficient evidence of possession.

The factum of possession over Zamindari property cannot be said to be established by the mere statement of a

—S 45—Lambardar—Lessee, if can be appointed.

A lessee cannot be a lambardar (*Marsh, S M*)

MUSADDI LAL v SYED MAZAHIR HUSAIN

1939 A W.R. (B R) 81=1939 R D 276=

1939 A.L.J. (Supp) 73.

—Ss 111 and 233 (k)—Failure to raise question of title in partition proceedings—Later suit on title

S 233 K.

ions of title

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in a Civil

(T) TULSHI

R.A. 175=

L.J. 433=

9 All 529.

alable.

In correction cases, unless the correction is of an obvious character or one that could be justified by recent

There is no provision in S 111 of the U. P. Land Revenue Act that the order of reference shall be final and

U. P. LAND REVENUE ACT (1901), S. 111.

therefore an appeal would lie from that order of the Assistant Collector to the Collector. (*Bennet and Verma, J.J.*) BALBHADDAR SINGH v. RAGHUBIR SINGH. I.L.R. (1939) All. 484=181 I.C. 418=

12 R.A. 234=1939 E.D. 185=1939 A.L.J. 245=1939 A.W.R. (H.O.) 274=A.I.R. 1939 All. 369.

—S 111—*Partition suit in Revenue Court—Objection by some that their proprietary right is not affected by a mortgage—Reference to Civil Court—Competency.*

Where in a partition suit before a Revenue Court, certain of the parties raise an objection that their proprietary right is not affected by a mortgage and it is contested by the others, it is a question of proprietary rights and one which may order of reference under S. 111 of the Revenue Act. (*Bennet and Verma, J.J.*)

RAGHUBIR SINGH I.L.R. (1939) All. 484=

12 R.A. 234=1939 E.D. 185=1939 A.L.J. 245=

1939 A.W.R. (H.O.) 274=A.I.R. 1939 All. 369.

1939 O.W.N. 173=A.I.R. 1939 Oudh 108

1939 O.L.E. 95=1939 A.W.R. (C.C.) 51=

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U. P. LAND REVENUE ACT (1901), S. 233.

—S 192-A—*Consolidation of mutation cases—Single judgment—Single appeal, if sufficient.*

Where under S. 192 A of the U. P. Land Revenue Act, consolidation is allowed by the Board of Revenue of several mutation cases and a single judgment is delivered in respect of all the cases, yet, when the matter is taken upon appeal, there should be as many appeals filed as there were applications before the original Court. (*Mehra, J.M.*) CHANDRIKA PRASAD KUNWARI v. BALBHADDAR NARAIN MAL. 1939 E.D. 316=1939 A.W.R. (B.R.) 285.

—S 207—*Order of mutation Court based on private award—Suit for possession on title—If barred.*

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A.I.R. 1939 All. 529.

—Ss 210 and 213—*Third appeal—Interference—Grounds—Patwari accused of accepting bribes—Findings of lower Courts—Interference*

(*Per Mehra J.M.*) S. 213 of the U. P. Land Revenue Act lays down the appropriate procedure under S. 210 in dealing with third appeal and unless the decision is contrary to some specified law, it cannot be interfered with in third appeal by the Board. Where a trial Court has clearly found that a patwari was caught red handed receiving bribes, and the patwari was fixed with notices as to the charge against him, the Board cannot interfere with the unanimous judgment of the As-stistant Collector, the Collector and the Commissioner.

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Revenue Courts on the merits, but only the objections to apply for a partition are only overruled, the order cannot be said to be one under Cl. (2) of sub-S (1) of S. 111 of the Land Revenue Act. An appeal against such order lies only to the higher Revenue Courts. An appeal to a civil Court can only lie when the partition officer has decided to determine the question of title himself and has passed the orders in the course of such determination. (*Zin-ul-Hasan, J.*) BHAGWAN PRASAD SINGH v. MST ABHAJI. 179 I.C. 801=

11 R.O. 209=1939 E.D. 113=1939 O.A. 215=

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U P LAND REVENUE ACT (1901) S 233

—S 233(1)—Fraudulent sale for arrears of land revenue—Civil suit to set aside if barred. See UNITED PROVINCES LAND REVENUE ACT, SS 175 AND 233 (1) 1939 A W R (H C) 650

UNITED PROVINCES MOTOR VEHICLES TAXATION ACT (1935) SS 4 AND 9—Liability for tax—Duration of time—Exemption from—When available

According to S 4 of the U P. Motor Vehicles Taxa

tration certificate and the registration card relating to the said motor vehicle (*Mulla J*) KANTA PRASAD v SECRETARY OF STATE 1939 A W R (H C) 422= 1939 A L J 455=A I R 1939 All 610

—S 9—Exemption from liability to tax—When available See U P MOTOR VEHICLES TAXATION ACT, SS 4 AND 9 1939 A W R (H C) 422

—Ss 15 and 16—Appropriation towards tax—Remedy—Jurisdiction of Civil Courts

Where a certain sum deposited by an owner of a motor vehicle is appropriated by a Treasury Officer towards the owners liability for tax for a particular period the owners remedy
Act No civil suit in respec

—S 16—Jurisdiction of Civil Court—Liability for tax See U P MOTOR VEHICLES TAXATION ACT

land it is entitled to recover money from using the land. The charge is one for the movable property and the right to recover it becomes due as itself immovable property.

—S 16—Liability for tax—Liability for tax extends to private culverts

U P MUNICIPALITIES ACT (1916) S 160

1939 A W R (H C) 126=1939 A L J 101=

A I R 1939 All 213

—S 40—Member of non City Municipal Board—Sanction for prosecution—Necessity See CR P CODE S 197 AND U P MUNICIPALITIES ACT S 40

1939 A L J 640

—S 76—Scope of power of dismissal under—Remedy by way of damages when open

The power of dismissal so far as persons coming

—S 128 and 164—Licence fee on carts—Suit to recover fee paid—Maintainability

Though the U P Municipal Act imposes an obligation on the owners of vehicles plying for hire to take out a licence and to pay a fee therefor, it only makes the collection of the tax which is authorised by S 128 (1) (iv) of the Act simpler than it might otherwise be, but the adoption of this method for the collection of the tax

A suit in respect of
S 160 (*Bennet and*
RD SAHARANPUR v
R (1939) All 477=

1939 A W R (H C) 295=1939 A L J 339
A I R 1939 All 519

—S 128 (1) cl (xiii)—Right to levy terminal tax—Import meaning of—Goods brought into the Municipality on its way to a place beyond municipal limits—

1939 A W R (H C) 295=1939 A L J 339
A I R 1939 All 519

—S 128 (1) cl (xiii)—Right to levy terminal tax—Import meaning of—Goods brought into the Municipality on its way to a place beyond municipal limits—

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1939 A W R (H C) 295=1939 A L J 339
A I R 1939 All 519

U. P. MUNICIPALITIES ACT (1916), S. 261.

Municipal Act which gives jurisdiction to the Municipal Board to adjudicate in matters of controversy between private individuals. (*Bennet and Collister, J.J.*) MOH. UDDIN v. ABUS SAMAD. 1939 A.L.J. 917=

1939 A.W.R. (H.C.) 609=A.I.R. 1939 All 599

—S 261—"Gutter"—Meaning of—Object of the section

The word 'gutter' cannot be read apart from the words "of a public street". The provisions of S 261 are intended to protect materials of a public street from damage or interference. The pavements, gutter and flags are part of the materials of the street. A drain which is not part of the street is not material of the street and hence such drain is not gutter of a public street (*Allsup, J.*) BAFATI v. EMPEROR

I.L.R. (1939) All 270=179 I.C. 669=

40 Cr.L.J. 234=11 E.A. 382=

1939 A.L.J. 34=1939 A.W.R. (H.C.) 68=

1939 A.Cr.C. 21=A.I.R. 1939 All 95

—S 265—Scope and object of.

Per *Allsup, J.*—S 265 is obviously intended to apply to those cases where obstruction is in fact caused

U. P. MUNICIPALITIES ACT (1916), S. 238-H.

Municipality has no authority to charge fees for stands. That being so, it is not within the competence of a Municipal Board to charge fees for such compulsory user and bye-law No 4 is therefore *ultra vires* of the Board. Even assuming that bye-law No 4 is *intra vires*, fees cannot be charged for a statutory obligation when the statute imposing that obligation does not expressly authorize the levy of such fees. When a Municipality decides to frame a bye law preventing hackney carriages from waiting for hire at any place other than the stands it is obligatory on it to appoint stands for the use of such carriages and that free of any charges. Therefore bye-law No 4 is also void for unreasonableness (*Iqbal Ahmad, Allsup and Mohammad Ismail, J.J.*) MEWA RAM v. MUNICIPAL BOARD, MUTTRA 181 I.C. 1=12 E.A. 76=1939 A.L.J. 500=1939 O.L.R. 445=1939 A.W.R. (H.C.) 525=

A.I.R. 1939 All 466 (F.B.)

—S 236—Instructions regarding Nasul—If rules framed under the Act or rules having the force of law

Instructions regarding nam, entrusted, to the manage

1939 A.Cr.C. 101=1939 A.L.J. 1026.

Bye law No. 2

J.J.—A. com
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U. P. MUNICIPALITIES ACT (1916), S 298.

Act. Hence a Municipal Board is competent to make a bye-law that "no motor car or lorry plying for hire shall be allowed to halt or run for the purpose of searching passengers at a public place other than the stand fixed for the purpose."

Per *Jagat Ahmad, J.*—Regulation of traffic is something distinct from regulation and control of vehicles. The word 'streets' in the phrase 'traffic in streets' means those portions of streets over which the public have right to pass and Municipal Boards are authorized to regulate traffic on such portions. The phrase 'traffic in streets' connotes the act of passing to and fro in the streets and not the standing of vehicles at a particular place fixed as stand. The fixing of stands or the provision about motor cars or lorries plying for hire being

U. P. PREVENTION OF ADULTERATION ACT (1912), S. 4.

—S. 318—Construction—'Any order or direction made by a Board'—If refers to an order made by the Board on appeal

The expression 'any order or direction made by a Board' occurring in S. 318 of the U. P. Municipalities Act, cannot possibly refer to an order passed by the Board upon appeal from a notice issued by the Executive officer. The Act does not provide for a second appeal to the District Magistrate from an order passed by the Board on appeal (*Afula, J.*) MOTILAL v. EMPEROR. 184 I.C. 434 = 12 R.A. 237 =

1939 A Cr C. 147 = 1939 A.L.J. 703 = 1939 A W.R. (H.C.) 605 = A.I.R. 1939 All 701.

—S 321—Bar of civil suit—Conditions—Order

made by a

red by S. 321.
CIPAL BOARD,

184 I.C. 385 =
12 R.A. 232 = 1939 A W.R. (H.C.) 268 =
I.J. 332 = A.I.R. 1939 All 383.

of civil suit—District Magis-
trate under S 318—If can be

ne passed by the District Magis-
trate of the U. P. Municipalities

—S. 298 (2) H (c)—Scope and object of.

they may deem fit and to charge fee for issuing the licence

Ahmad, Alisp and Mohammad Ismail, JJ) MEWA
RAM v MUNICIPAL BOARD, MUTTRA

181 I.C. 1 = 12 R.A. 76 = 1939 A.L.J. 600 =
1939 O.L.R. 446 = 1939 A W.R. (H.C.) 525 =
A.I.R. 1939 All 466 (F.B.)

—S. 307—Complaint under—Validity of notice
under Municipalities Act—Competency of Criminal
Courts to entertain plea

A Criminal Court cannot enter into the question of
the validity of a notice issued under the provisions of
the Municipalities Act, where a complaint has been

—S 307—Inability to comply with notice—Accused
if guilty.

The language of S. 307 of the U. P. Municipalities Act necessarily implies that the person who fails to comply and thus renders himself liable to the penalty provided by the law must have the power to comply. To hold a person guilty of not complying with the notice when under the law he has not the power to do so, is highly unreasonable. On the facts it was held that it was possible for the accused to have complied

—S. 321—Bar of suit—Suit by an adjoining owner
to restrain the working of a mill sanctioned by the
Municipal Board—If barred. See U. P. MUNICIPALITIES
ACT SS. 245 AND 321

1939 A W.R. (H.C.) 609.
—S 326 (3)—Applicability—Suit to declare a
bye-law ultra vires

The word 'act' in S. 326 (3) of the U. P. Municipalities Act refers only to tortious acts. Where a suit is one for a declaration that certain bye laws framed by the Municipality are *ultra vires*, the cause of action for such a suit is a recurring one which arises from day to day, or from the fact of the existence and as such application to such a
JAGANATH v. MUNI-

1939 A W.R. (H.C.) 211 = 1939 A.L.J. 168 =
A.I.R. 1939 All 337.

UNITED PROVINCES PREVENTION OF
ADULTERATION ACT (VI OF 1912), S 4—
Applicability—Vegetable oil mixed with ghee—Licensed
vender of oil, if guilty—Absence of prejudice to
purchaser—Relevancy.

Where a person who was licensed to sell only vegetable oil sells oil in which ghee is mixed, he is undoubtedly guilty of an offence under the second portion of S. 4 of the United Provinces Prevention of Adulteration Act. The question that mixing ghee is not to the purchaser does not arise (*Zia ul-NARAIN v. MUNICIPAL BOARD*, 1939 O.A. 224 = 1939 A Cr C. 33 = 179 I.C. 993 = 40 Cr.L.J. 301

U. S. PREVENTION OF ADULTERATION
ACT (1912), S. 16

11 R O 218=1939 A W.R (C C) 49=
1939 O W N 179=A I R 1939 Oudh 105

—Ss 16 and 17—Breach of R. 8 of rules framed under S. 16 by servant of licence-holder—Servant, if liable

It is only the licence-holder who can be prosecuted under S 17 of the U P Prevention of Offences Act, if he commits a breach of S 16 of the Act, for R 8 is a licence holder. Any other person, to the licence-holder may be cannot be rightfully charged under S 17 of the Act for committing a breach of R 8 for the simple reason that the rule in question does not cast any duty on him. A licence holder cannot be proceeded against for any breach of the rule by his servant as there is no provision either in the Act or the rules framed under S 16 making a master liable for any act done by his servant or agent (*Mulla J.*) MURARI LAL vs EMPEROR 1939 AWR (HC) 791 =

UNITED PROVINCES REGULATION OF
SALES ACT (XXVI OF 1934) S. 3 (4)—*Appal—*
Subsequent transferee—Right

Under the Regulation of S
ferces have no right of appea
RAM v JAGANNATH

—*SS 4 (a) and 5—Exe*
of order under *S 5—Pro* *eedings under Encumbered*
Estates Act in progress—Effect—Dismissal of applica
tion under Encumbered Estates Act and subsequent
restoration—Effect

Where the option allowed by S. 4 (a) of the United

U P. VILLAGE PANCHAYAT ACT (1920). S 71

General Clauses Act, s. 5, for the Stay of Proceedings. The Act has not given any date fixing the terminus when the stay order will come into force. Where the Board of Revenue had fixed in anticipation of the Act, a date for purposes of stay, if any case happens to be decided after such a date and before the date of the actual publication of the Act, the stay order would be stretching.

1933 A W R (B R) 20=1933 A L J. (Supp) 42
UNITED PROVINCES TEMPORARY POST
PONEMENT OF EXECUTION OF DECREEACT
(1937), 8 6—Applicability—Compromise decree in a
suit for malicious prosecution—Nature of decree

Where a compromise decree is passed in a suit for malicious prosecution, it is clear that it is a money decree passed in a suit founded on a plaint in which damages for tort were claimed and it has to be construed as a decree for damages for tort. S. 6 of the United Province Temporary Postponement of Execution Act is to be read as laying down that nothing therein contained

180 I C 117=1939 O W N 225=
1939 A W E (C C) 53=1939 O A 282=
1939 E D 160=1939 O L R 116=
A I R 1939 Omdh 128

U P TOWN IMPROVEMENTS ACT (VIII OF 1910).—Appeal against order of Tribunal constituted

U.P. STAY OF PROCEEDINGS ACT (1937), S 2

Applicability—Decree in suit under S 86 of the Tenancy Act reversed and remanded—Restitution under S 144, C. P. Code—If affected.

3. 144, C. 2 : Court—27 September 1991
 4. Under C 86 of Area Tenancy Act was

ing to appoint a panel to be selected in accordance with the opinion of the majority of the members of the tribunal. Where neither of the two assessors would agree as to the correctness of the amount of compensation suggested by the chairman and wished to hear further evidence on the matter there is a dis-

1939 O W N. 270=1939 A W R (B R.) 147

UNITED PROVINCE VILLAGE PANCHAYAT

UNITED PROVINCE VILLAGE PANCHAYAT

ACT (VI OF 1920), S 71—*Proceedings under—
Nature of—If proceedings of a Criminal Court—If*

UPPER EURNIA LAND AND REVENUE REGULATION (1889), S. 53.

specifies more closely to a caste panchayat. It is not therefore a court constituted under any law other than this Code as defined by S. 6, Cr. P. Code and hence not a body subject to the jurisdiction of the Chief Court. (*Zia-ul Hasan and Hamilton J.J.*)

TADRI NATH v. SHEGFHAL 14 Luck. 592 = 40 Cr.L.J. 528 = 11 R.O. 240 = 160 I.C. 142 = 1939 O.A. 259 = 1939 A.W.R. (C.C.) 54 = 1939 A.Cr.C. 44 = 1939 O.L.R. 120 = 1939 O.W.N. 231 = A.I.R. 1939 Oudh 143.

UPPER EURNIA LAND AND REVENUE REGULATION (1889), S. 53 (2) (xi).—Applicability.—Bullock attaches for failure to pay thathameda tax—Claim by third party—Investigation of claim—Jurisdiction of Civil Court.

There is nothing inherently unjust or contrary to principles of natural justice in S. 53 (2) (xi) of the Regulation. The section does not bar the subject from all his remedies. S. 53 (2) (xi) is not confined in its application to questions as between the tax-payer and the revenue-collecting authorities. It cannot be said that the jurisdiction of the Civil Courts is barred only in cases as between the defaulter or tax-payer and the revenue-collecting authorities. The jurisdiction of the Civil Courts is barred in connection with all claims connected with and arising out of collection of land revenue. Thathameda is revenue; where therefore bullocks belonging to a person are attached for his failure to pay the thathameda tax, and the bullocks are claimed by another person as his own, the jurisdiction of the

USURIOUS LOANS ACT (1918), S. 3

—S. 3.—Applicability.—Conditions for grant of relief

Where the circumstances undoubtedly point to the conclusion that the interest as claimed is excessive, but it cannot be held that the transaction is unfair as between the parties to the suit, no relief can be given under the Usurious Loans Act. (*Fazl Ali, J., on difference between Manchar Lall and Chatterji, J.J.*)

MALHO PRASAD v. GOURI DUTT 183 I.C. 179 (2) = 5 B.R. 874 = 12 R.P. 101 (2) = 20 P.L.T. 825 = A.I.R. 1939 Pat. 323.

—S. 3 (as amended by U.P. Amendment Act of 1934).—Unfairness of transaction.—Finding if necessary to give relief

Without having to consider whether or not the transaction was substantially unfair, the Court can under the Usurious Loans Act relieve the debtor against a portion of the stipulated rate of interest. (*Zia-ul Hasan and Verke, J.J.*)

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—S. The ex.

Usurious Loans Act, does not require that there should

USURIOUS LOANS ACT (X OF 1918).—Reasonable interest.—Compound interest at 15 per cent. and over with half yearly rests.—Reduction to 15 per cent. simple interest.—If reasonable

Where the contract rate of interest was 15 per cent. per annum with half yearly rests, on one transaction, and Rs. 110-0 per cent. per annum with half-yearly rests on another transaction of loan entered into by a guardian of a minor, and the High Court reduced the interest to 15 per cent. per annum simple interest.

Held, that the reduction of the rates of interest under the Usurious Loans Act to 15 per cent. simple interest was eminently reasonable. (*Sir George Rankin*)

CHUNNI LAL v. UDAI PRAKASH. 183 I.C. 177 = 43 O.W.N. 1093 = 1939 O.L.R. 505 = 12 R.P.C. 59 = 5 B.R. 946 = 70 C.L.J. 373 = A.I.R. 1939 P.C. 200 (P.C.)

—S. 3.—Applicability.—Conditions.—Mortgage executed with sanction of Court providing for compound interest at 18 per cent.—Validity.—Interest.—If excessive or unfair.

In order to invoke the application of the provisions of S. 3 of the Usurious Loans Act, it must be established that interest is excessive and that the transactions as between the parties was substantially unfair. Compound interest at 18 per cent. cannot be held to be excessive where the terms of a mortgage providing for 18 per cent. compound interest has been arranged freely with the sanction of the Court, that rate of interest must be

GANGA DEI 182 I.C. 544 = 12 R.A. 31 = 1939 A.L.J. 40 = 1939 A.W.R. (H.C.) 12 = A.I.R. 1939 All. 323

—S. 3 (1), Proviso 1, Expl. and United Provinces Agriculturists' Relief Act, S. 33.—Series of mortgages.—Relief in respect of.—If available.

It is clear from the Expl. to Proviso 1 to S. 3 (1) of the Usurious Loans Act, that the Act permits a suit to be brought on a series of transactions. Hence where there were a series of mortgages, each being in renewal of an earlier one, it is open to the Court to reopen and to give relief in respect of, the entire transaction comprising the various mortgages, under the Agriculturists Relief Act and the Usurious Loans Act.

193

—S. 3 (1) proviso (ii).—If affects the powers of a special judge dealing with a decree under the United Provinces Encumbered Estates Act. See UNITED PROVINCES ENCUMBERED ESTATES ACT S. 14 (4) 1939 O.W.N. 385.

—S. 3 (2) (b), Provisions (3) and (5) (as amended by U.P. Amendment Act of 1934).—Discretion of Court.—Extent.

The U.P. (Local) Act XXIII of 1934 has fixed the limits within which a Court has discretion to hold whether a certain rate of interest is excessive or not.

VENDOR AND PURCHASER

14 Luck 461=180 IC 1007=11 R O 275=
1939 R D 249=1939 O L R 232=
A.I.R. 1939 Oudh 223

VENDOR AND PURCHASER—*Breach of agreement—Damages—Agreement to sell certain premises—Premises found to be affected by bustee road sanctioned under S 345 Calcutta Municipal Act—Right of seller to call upon buyer to complete sale*

A person entered into an agreement of sale of certain premises. The agreement was liable to be rescinded at the buyer's option if the seller had no good title or if before the agreement the premises or any portion of them had been notified to be acquired. Subsequently it was found that the premises were affected by a proposed bustee road sanctioned under S 345 Calcutta Municipal Act. The buyer saw the bustee surveyors and the members of the Bustee Committee and after making full inquiries wrote to the seller enclosing for the latter's signature an application for cancellation of the bustee road alignment and a copy of building plan. These papers having been returned by the seller without

reply called upon the buyer to complete the transaction. The seller's cancellation of the plan had been done, the seller was liable for damages for

Held that the seller was not entitled to call upon the buyer to complete the sale as long as there was a possibility of the road being constructed in accordance with the alignment shown in the standard plan. Whether the existence of the plan be regarded as an encumbrance or a removable defect of title it was the duty of the seller to take every step to have the defect removed. The seller in refusing to apply for sanction of the building plan and the cancellation or variation of the standard plan of road alignment had committed a default which entitled the buyer to ask for damages. (*Paikriddge J.*)
BINAM BEHARY SINHA v CHANCHARKESHI DAS
A.I.R. 1939 Cal 639

Document of title—Trust receipt—Nature and effect of

Execution of conveyance by some of vendors at one time and by others subsequently—Effect of operative as regards shares of first executants

A deed of conveyance executed by some of the vendors at one time and by the remaining vendors subsequently is a complete and operative document so far as the interest of the vendors who first executed is concerned from the date of their execution. Even if no specific shares are mentioned in the deed whatever right or interest they have in the property would undoubtedly pass to the vendee. (*Mukherjee and Bose JJ.*)
LALIT MOHAN GHOSH v ANIL KUMAR BOSE
43 O W N 1133

WAGER See CONTRACT ACT S 30

WAJIB UL ARZ—*Entry in—Effect*

WATER CESS

The effect of the entry in the wajib ul arz was to fix the terms entered therein as incident of the tenure of a grove holder in the village and as such it applied to all grove holders who accepted or maintained such tenures in the soil belonging to the owner of the village. (*Hamilton, J.*)
RAM DIN v BALBHADDAR SINGH,
14 Luck 515=181 IC 70=11 R O 280=
1939 O L R 235=1939 R D 250=
1939 O A 381=1939 O W N 372=
A.I.R. 1939 Oudh 210

Entries in—Value of

A wajib ul arz is of greater authority than a riwaj i am which is of general application and is not drawn up in respect of individual villages. The Customary Law of the Lahore district complied in 1912/1916 is of course a riwaj i am and in such compilations an attempt is made to give general replies. The preparation of wajib ul arzes has now ceased but that does not detract from the weight to which such a document is entitled. A wajib ul arz is confined strictly to the village for which it is drawn up and obviously should give the best account of what the customs of the particular village

It follows that the wajib ul arz must be taken to

riwaj i

(Add)

IEHTAB

A.I.R. 1939 Lah 93

Probative value of—Recognition by the Privy Council

The probative value of the village records or wajib ul arz has been recognized by the Board repeatedly and a wajib ul arz of itself has been held to be sufficient to establish a custom. (*Sir George Loder, J.*)
AJAI VERMA v VAJAI KUMARI
179 IC 620=
1939 A W R (PC) 1=1939 O W N 157=
41 P L R 112=5 B B 312=1939 O L R 90=
I L R (1939) Kar 98 (PC)—1939 P W N 143=
1939 M W N 217=11 R R C 145=
1939 A L J 234=43 C W N 585=
41 B o m L R 700=A.I.R. 1939 P C 22 (PC)

WATER CESS—Liability for—Inamdar—Right to supply of water for irrigation—Extent of—Test to determine—Inam title deed—Entry of land as dry—Effect of—If conclusive—Conduct of parties—Payment of cess for long period—Inference of liability to cess—If justified

Where some of the lands included in an inam are described in the title deed issued to the inamdar as dry,

that that description

of things at the

is nothing in the

the inamdar from

of water for irriga

is a immunity from

ed by the terms of

engagement to be

implied from the way in which the inam was dealt with at the time of the inam settlement and where quit rent of an inam is fixed on the income derived from the cultivation of a certain extent of land in a certain manner, the inamdar is entitled to use, free of water cess, as much quantity of water as may be required for the cultivation of such an extent in the mode in which such income was calculated. The fact that the inamdar has paid water cess in respect of the lands for a long period cannot by itself deprive the inamdar of his rights any more than the circumstance of omission on the part of the Government to levy water cess for a number of years can detract from their right though that is one of the circumstances to be taken into account in ascertaining the facts. (*Paradachariar and Pandrang Row JJ.*)

WATER-CESS.

SECRETARY OF STATE FOR INDIA v. SESHAVATA

take water from the tank and raise second crops, the inamdar also is jointly liable to the zamindar to pay water cess equally with the tenants. The liability arises on the basis of an implied engagement between the zamindar and the inamdar. There is no difference in this respect between a pre settlement inam and a post settlement inam. The basis of the liability is one in the nature of an implied contract and not one of tort. The suit by the zamindar against the inamdar and the latter's

WILL.

considerable number of years may create a right in

the upper owner upon the lower owner's land. It is water let down for the convenience of the upper owner and for which he has no use. Though it is open to an upper owner to discontinue the letting of water if he can, it is another thing to claim compensation for the use of water which can no longer be said to be his. (*Venkataramana Rao, J.*) **VENKATARAYUDU v. VENKATARAMANA RAO.** 1939 M W N 1018=

50 L W. 662.
 (IV OF 1909), Ss. 2, 3 and 4—
 to punishment under I.P.C.—

WATER RIGHTS—Ryot holding land tank bed—Right to supply of water for Power of Court to withhold or regulate—L

In the Madras Presidency a ryot is entitled the water which his lands have been acc irrigation purposes without interference by the Govern ment or any one else. The Government cannot be required to supply water when none is available, and it has a right of conserving and distributing the water available in the interests of the particular ayacut. In years of shortage, the only obligation of the Government is to make an equitable distribution of water. The ryot has a claim against the Government when it withholds from him the water which he has a right to demand taking into consideration the supply available. The Government has no right to supply a city with water without regard to the claims of the ryots in the old

supply of water for the cultivation of one crop annum subject to the power of the Government to con the distribution of the available water in the interests of the landholders whose lands comprise the old ayacut. (*Leach, C.J. and Mahavan Nair, J.*) **MADURA NAYAKAN PILLAI v SECRETARY OF STATE FOR INDIA.** I.L.L. (1939) Mad. 483=

1939 M.W.N. 200=49 L W 151= A.I.E. 1939 Mad 386=(1939) 1 M.L.J 176

Upper and lower owners—Discharge of water by upper owner to land of lower owner—Use of same by lower owner for irrigation—Liability to pay compensation to upper proprietor.

A person owning lands in a lower level is bound to receive water coming in its natural course from a higher level, but the same cannot be said with reference to water in an artificial stream flowing on the land of the party by whom it was caused. If the stream is made to flow upon the land of another without his consent, it is a wrong, though the discharge of such water for a

under Ss. 313, 314, 350 and 311 A.C. and of abetment or attempt at an offence under S. 375 that a person can be punished with whipping in addition to any punishment that can be awarded under the Penal Code (Zia-

S 4—Magistrate rejecting punishment of whipping without medical opinion—Propriety

A Magistrate considering the question as to whether a sentence of whipping is appropriate in a particular case the punishment of whipping on

WIDOW. See HINDU LAW—WIDOW.

Maintenance See HINDU LAW—MAINTENANCE

WILL. See also (1) HINDU LAW—WILLS.

(2) MAHOMEDAN LAW—WILLS

Attestation—Presumption—Attesting witnesses denying valid attestation—Court, if can discard their testimony

Every presumption will be made in favour of due execution and attestation in the case of a will, regular on the face of it and apparently on the face of it duly executed. Although the attesting witnesses deny that the will was attested according to law, the Court may, on consideration of the other evidence or of the whole circumstances of the case, come to the conclusion that their evidence is of a suspicious character and a ingly discard their testimony and pronounce in fa

WILL

the will (*Thomas C J and Zia ul Hasan J*)
MOHA
NADK

remoteness

If a restriction of gift over is void for remoteness or otherwise the original gift becomes absolute (*Thomas J*) ALI RAZA KHAN v NAWAZISH ALI KHAN

1938 O A 845=1938 O WN 1157

Construction—Appointment of legal adviser—Trust, if created in his favour

A testator by his codicil stated as follows—My present legal adviser *M* shall remain engaged as legal adviser and pleader after my death for protection of the interests of and for the benefit of the estate and so long as he will remain engaged on business he shall get retainers and fees as fixed at present

that such an intention was not expressed in the codicil

without a fresh mandate from the executors and that he did not however intend that the executors should be compelled to employ *M* for an indefinite period without regard to their own wishes on the requirements of the estate (*Panckridge J*) SARAT CHANDRA v SADA SIVA MITTAR

Constructs

One of the gold
it is possible to
It does not mean
a will so as to ave
reasonable contt
(*Thomas J*)
KHAN

Construction—Bequest of sum set apart for emergencies—Ascertainment of amount—Providence of Court—Resort to other evidence

Where a will left a sum set apart for emergencies subject to increase or decrease the Court is entitled to take into account, the conditions in which the finances of the estate were left with a view to arrive at the amount

carry out the in
JADUNATH
178 IC 950=
1939 O A 9=

Construction
includes descendant

A residuary bequest in a will by a Hindu was in the following terms "I give bequeath and devise all and whatsoever I possess or I may die possessed of or I may

my said daughter dies or becomes a widow without issue heirs my nephew (sister's son) and his he succeed to my estate as absolute owner or thereof"

Held that the conditions under which the gift was to take effect that is the death or widowhood of *P* without issue he rs must be fulfilled in the lifetime of

WILL

the first tenant for life *G* The period of distribution

1 des
ption
ULLA
1 637

Construction—Intention not sufficiently clear—Power of Court to supply deficiency

While considering a will, if the intention of the testator is not sufficiently clear a Court of construction has got the power to supply the deficiencies of language or verbal construction (*Thomas, J*) ALI RAZA KHAN v NAWAZISH ALI KHAN 1938 O A 845=1938 O WN 1157.

Construction—Letter addressed to Deputy Commissioner—If amounts to a will—Analogy of wills of Taluqdars, in the form of letters—Value

Where a document is in the form of a letter addressed to the Deputy Commissioner of a Division and it is con

(*York, J*) DEBI DAYAL v SRI 14 Luck 595

=11 R O 264=1939 O L R 214=
WN 345=A I R 1939 Oudh 145

Construction—Misdescription—Legatee named but misdescribed—Validity of bequest

If a testator appoints his wife *A B*, as the sole executrix of his will and bequeaths to his said wife all his properties absolutely believing the person named to

Construction—Persona designata

The testator who described himself as a mahant but was neither the mahant of any religious institution or math nor a udasi sanyasi adopted an infant boy as his chela. The testator executed a will by which he gave the whole of his property (which was his private property) to the infant and made him mahant and successor in his place appointing his wife as the guardian of the infant. The will recited that if the infant died the wife had the power to appoint another person as a chela. It

death *Bakt* should make any claim against the property the same would be invalid. The testator died a few months after the execution of the will and thereafter

which *D* took in the property under the will

positive words such as those used in the will of infant chela. Hence *D* took no interest in the property

WILL.

under the will either as a chela or of
(*Mfr. Jayakar.*) KARTAR SINGH *v.* L.

182 I.C. 753=1

WILL.

governing English wills
rests words of disposition
Court.

Construction—Powers of Court—Limits.

Court has no power to give effect to a hypothetical in-

The general principles of construction governing English wills are applicable to Hindu wills also. Where there are no express words of gift but the gift can be implied from the language used in the will, the Court should have regard to the dominating intention of the testator and effectuate that intention by ascertaining it from the entire scheme of the will (*Zia-ul-Hasan and Hamilton, JJ*) LALTA BAKHSI SINGH *v.* PHOOL CHAND 1939 O.W.N. 530=1939 O.A. 521.

Construction—Principles—Intention of testator.

There are two cardinal principles to be observed in the consideration of wills regarding the intention of the testator. The first is that clear and unambiguous dis-

Construction—Rules of—Absolute interest to legatee—Failure of trusts imposed on such interest—Effect of.

If in a will there is an absolute gift to a legatee in the

Permissibility.

It is not permissible in a matter of construction of a will to rely on a statute to interpret a term with which the statute does not directly deal (*Panckridge, J*) GOBERDHONE *v.* PRAFULLABALA DASI

A.I.R. 1939 Cal. 637.

Construction—Rules of—Addition of words

If on the face of a will, the testator or testatrix has omitted certain words and those without reasonable doubt from necessary to effectuate the interpreted as a matter of construction words in the will are clear and unambiguous, no additional words can be added to cut down their plain meaning.

The residuary clause in a will executed by a testatrix was, "the rest of my estate to be divided equally between my brothers and sisters or their immediate heirs including my sister E's family and between my husband M's nieces and nephews (immediate heirs)". The question arose as to whether the grand nephews and grand nieces of the testatrix's husband, or his nephews and nieces who

estate in favour of any person and in any manner one chose as if that disposition had been made by the testator himself. As regards the two-third estate remaining undisposed at the time of the wife's death, the will directed that the surviving trustee should divide that two-third estate equally among all the brothers and sisters of the testator alive when the will was made and that, should any of them predecease his wife then the share which

for the distribution of the two third of the residuary estate given to the testator's brothers and sisters having arrived, a question arose whether the estate of the deceased sister was entitled to share in the distribution.

Held, that the deceased sister's share of the residue vested in her on the death of the testator subject to divestiture only in the event of her predeceasing the testator's widow leaving child or children and such event not having occurred, her representative was entitled to have share (Lord Thankerton) GREENWOOD *v.* GREEN-

181 I.C. 355=11 E.P.C. 260=

A.I.R. 1939 P.C. 78 (P.C.).

Construction—Vested interest—Property be-
twice for life and after her death to vest in
heirs then in existence—Nature of interest

of sons—Succession Act, S 119.

entitled to a share

Held, that there was no suff from which the omitted words sufficient reason for thinking suggested words would carry testatrix as expressed in the will heirs" could not be construed

property to his wife
in his sons or their
Later in the will
he "entitled" to his

testator's sons did not
but only after
lifetime they
(J.) GANESH

3 O.W.N. 490.

WILL

—*Distribution—Property not disposed by testator*

AIR 1939 Sind 322
—*Executor—Duties—Executor when beneficiary with other infant beneficiaries*

Where one of the executors of the will is also a beneficiary under the will along with other beneficiaries who

180 IC 612—11 R P C 186—
AIR 1939 P C 33 (P C)

—*Executor—Powers—Passing of property from executor to devisee—If breach of covenant not to assign*

An executor under a will takes the property himself but for the devisee under the will. The passing of the property from the executor to the devisee is not therefore a breach of the covenant not to assign since the primary function of an executor is to transfer property to some devisee even if that devisee be himself. A lease which was granted to a person not simpliciter but including his heirs, executors, administrators and permitted assigns contained a clause that the lessee could not sell, donate, mortgage or otherwise dispose of or deal with the interest without the consent of the lessor. The lessee by his will gave all his property including the lease to one of his sons and also appointed him executor of the will. After the lessee's death, the name of executor was recorded in the Government records as the substituted lessee and the landlord accepted rent from him.

Held that the disposition of lease by will did not constitute a breach of covenant not to assign because the executor being in terms one of the lessees was much entitled to hold a lease as a permit. Even assuming that the devise was in breach of covenant the executor's name having been on the lease and the lessor having accepted rent from the executor, the lessor must be deemed to have waived any forfeiture. (Lord Porter) JAYAWARDENE v JAYAWARDENE 182 IC 770—12 R P C 18—41 P L R 717—50 L W 87—AIR 1939 P C 138

—*Executor—Right to release from beneficiary*

An executor is not as of right entitled to a release from his beneficiary. (Roberts C J and Brannan J) MARIAM BIBI v CASSIM EBRAHIM

AIR 1939 Rang 278

—*Letters of administration—Grant of to legatee*

It is presumed that all the legacies or at least the legacy in favour of the grantee of the letters of administration in accordance with the tenor of the will. (Munshi J) MANOHAR LALL JI v INDU PATIL CHARAN MITRA 18 Pat

—*Oral—Proof—Onus—N*

WILL

The onus of establishing an oral will is always a very

sary

If a case of an oral will has been set up by any of the parties, then it would be the paramount duty of the person founding his claim on the oral will to prove the exact words used by the testator. The Court must be made

—*Probate Court—Application for letters of administration with will annexed—Finding that will not proved—Sufficiency*

For the purpose of an application for letters of

180 IC 612—11 R P C 186—
AIR 1939 P C 33 (P C)
—*Proof of—Delay in propounding unregistered will—Duty of propounder*

Per L. Rahman J.—The burden of proving a will in solemn form is cast upon the propounder and if an unregistered will is sought to be propounded after a lapse of more than 20 years, all manner of doubt and suspicion which are likely to arise should be removed by him. (R C Mitter and Latifur Rahman JJ) HARIMATI DEBI v ANATH NATH ROY 183 IC 758—12 R C 183—69 C L J 443—AIR 1939 Cal 535

—*Proof of—Onus*

Per Mukherjee J.—The burden of proving due

attesting witnesses and pronounce in favour of the will if it is satisfied from the evidence collectively or from the circumstances of the case that the requirements of

—*Proof—Parol evidence—Admissibility—Duty of Court—Considerations*

by any party to destroy or suppress parol evidence the Court bearing implications of its

WORDS AND PHRASES

— "Import" See U P MUNICIPALITIES ACT (II OF 1916), S 128 (1), Cl (xiii)

1939 A W R (H C) 762

— "Interests" See C P CODE O 21 R 90

1939 N L J 238

See also 43 C W N 189 =

68 C L J 516 = A I R 1939 C

— "Justice, equity and good conscience"—*Meaning*

Justice, equity and good conscience mean more than the rules of English law so far as it is applicable to Indian society and circumstances in the country (*Davis J C and Tyabji, J*) TARACHAND KHAMANDAS v SYED ABDUL RAZAK SHAH

I L R (1939) Kar 422 = 182 I O 226 = 12 R S 4 =

A I R 1939 Sind 125

— "Lease"—"Rajyat" meaning See BENGAL LAND REVENUE SALES ACT S

11

— "Marfat"—Meaning of

ACT—LICENSEE

— "Mere skill" meaning

CTION OF GAMBLING ACT, S 13

— "Phal"—Meaning of

Where the entries in a *waq amdan* phal darakhshan (income of the fruit of trees) in certain proportions between the owners and the occupancy tenants,

Held that the word 'phal' in the context meant the fruit of the trees and not the prod
HANS RAJ v TULSI

— "Prevailing rate" See BE

S 30 (a)

— "Purnaha Santhathi"—Meaning of

— CONSTRUCTION

— "Road" what it includes

ORISSA MUNICIPAL ACT (VII OF

— "Signature"—Meaning—St

rubber stamp—Sufficiency See E

TION PAPER

— "Transfer by operation of l

O 21, R 16,

— "Usage", meaning of S

VENUE CODE, S 83

— "Uttaradhikari" (Benga

STRUCTION

— "Waist" (Benga)

TION

— "Water"

EMBANKMENT ACT S 10

45 C W N 391

— "Yak Jaddi"—Interpretation

The natural interpretation of the term 'yak jaddi' used in reference to Dholi and Bhonda tenures would be to restrict it to the descendants of a common ancestor who had held the land (*Ram Lal, J*) ZAHARIA MAL v SHIB CHARAN

41 P L R 672

stances of each given case A person made an applica-

ed and hence the husband was not entitled to claim any compensation (*Roberts C J and Dunkley, J*) DAMJEE v MAUNG HLA SEIN A I R 1939 Rang 369

— S 3—'Out of and in the course of his employ ment'—Bus driver killed in accident when travelling in

(*Lurn and Stodart JJ*) MUHAMMAD IBRAHIM v KAMAL SAHEB 50 L W. 796 (2) = 1939 M W N 1205—(1939) 2 B L J 851

— S 3—Willful disobedience of workman—Liability

(11)—Railway Workman travelling on foot board—Liability of railway company—East Indian Railway Traffic Working Orders Nos 356, 357 and 369

A mistri employed by the East Indian Railway Company was instructed to go from A to B by train to do certain work there on the railway and then return by train to A. On his return journey home, the mistri was not able to get into the compartment as the train was over

WORKMEN'S COMPEN. ACT (1923), S. 10

crowded, and while he was waiting on the foot board, the train started and he was pushed down by some one from inside the compartment whose door was open, and he lost his leg as a result.

foot boards was not an order expressly given or a rule promulgated for the purpose of securing the safety

—S 10—*Applicability—If has reference to proceedings before Commissioner*

S. 10 of the Workmen's Compensation Act occurs in Ch. II which deals with matters relating to workmen's compensation and each cannot be interpreted as law

to the proceedings before the Commissioner but only to the workmen's claim for compensation against the employer. The words 'claim for compensation used in S. 10 of the Act do not relate to proceedings before the

A.I.R. 1939 Nag. 106

—S 10 (1)—*Instituted within six months—Meaning of*

The words "instituted within six months" in S. 10 (1)

ZAILDAR.

Section 12 shows that the principal who employs a contractor shall be liable to compensation to workmen whom he did not immediately employ but who are employed by the contractor. But before a contractor is

Where there is only an agreement by which certain selected persons are employed

awarded to several workmen involves a sum of more than Rs 300, if the amount involved to each individual employee is less than Rs 300. The rights of one workman are not to be governed by the conditions and circumstances of another workman though the cases are *Manohar Lall, J.*

17 Pat 658=

589=5 B R. 581=

1939 P W N 175=A I R. 1939 Pat. 181.

—S 30 (1) (a)—*Appeal—Entire claim held barred by limitation.*

Where the claim for compensation has been disallowed

I L R. (1939) Nag 460=181 I C 920=

11 R N 491=1939 N L J. 90=

A I R 1939 Nag 106.

(*Wort, A. C. J. and Manohar Lall, J.*) **ABDUL MATIN v. BIDESI BAJWAR**

181 I C 460=11 B P. 589=

1939 P W N 175=17 Pat 658=

5 B R 581=A I R 1939 Pat 181

—S. 12—*Workmen employed by contractor—Liability of principal—When arises.*

—*Appointment of—Women.*

Although women are not by law excluded from appointment as Zaildar, the duties of a Zaildar are such as to render them, particularly *paradana-shin ladies*, unfit for the post (*Doshi, F C*) **KHAN MOHAMMAD KHAN v. SARDAR BIBI**

18 Lah L T. 19.

II—SELECT ENGLISH CASES.

**ACTION IN BRITISH COURT FOR PRICE IN, BANKER AND CUSTOMER,
FRENCH CURRENCY C.**
IN FRANCE—Payment of
currency calculated at rate of

at the rate of exchange ruling at the date of the writ. The plaintiffs insisted that they were entitled to £105 6 4 which was the equivalent of the 8,100 francs at the time when by agreement of the parties the debt was entered as 10,000 francs.

When the debt became due in 1922 2 Ch 589,
House of Lords given 1
v WILLS

ANNUITIES—Family
ment of £500 clear of
but not surtax—Relief

deed of family arrangement was entered into under which the testator's widow charged the residue of the estate (after providing for the annuities under the will) with the payment in addition by the will trustees in priority to all others and as a first charge £500 each to the children. "Clear of all deductions for income tax but not surtax". The children who were entitled to certain reliefs under the Income Tax Act, claimed that they were entitled to the residue claimed. The widow claimed that the sums so recovered and the widow was entitled to the residue claimed. The children claimed that the sums so recovered should go back to the estate.

ground See INSURANCE—ARBITRATION
(1939) 1 All ER 95 (CA) = 55 TLR 35 =
1939 WN 26

—*Successive arbitrations under one cause of action*
—*Validity*

A clause in a contract provided that all disputes from time to time arising out of the contract shall be referred to arbitration. The mercantile custom to decide first the question as to whether or not a particular parcel of goods was damaged before going into the hands of the defendant might arise upon the question as to whether or not a particular parcel of goods was damaged before going into the hands of the defendant. A second claim

ARBITRATION ACT (1889) S 4—Defendant's
liability getting action put in counsel's list—If
up in the proceedings barring an application for stay
of proceedings

Arbitration Act S 4 provides "If a party to a submission commences any legal proceedings in any Court against any other party to the submission, any party to such legal proceedings may at any time after appearance and before delivering any pleadings or taking any other

of her cheque her
ent in cash
is not entitled to
the damages are
could not, by the exercise of any reasonable diligence, be ascertained and proved as special damages and pleadings

BANKRUPTCY,

should not be allowed to be amended at a late stage.
GIBBONS v. WESTMINSTER BANK, LTD.

L.R.

BANKRUPTCY—

ing creditor to d
available to petitioning creditor as act of insolvency.

A petition for adjudication was filed on 11th January, 1939, by a creditor based on a deed of assignment dated 9th January, 1939, in favour of trustees and creditors. The assignment conferred power on the trustees to carry on the business and employ the trust property for that purpose. On 10th January, 1939, the trustees sent an order to petitioning creditor for sets of furnitures and one set was delivered on 10th January, 1939 and the other two on 13th January, 1939. A partner of the firm of petitioning creditors with their solicitor attended a meeting of the creditors on 12th January, 1939, which was adjourned to 17th January, 1939. Immediately after the adjournment the petition was served on the debtor. At the adjourned meeting on 17th January, 1939, the creditors present without dissent from the petitioning creditors agreed to leave the carrying on the business with the trustees pending a full meeting of creditors to be called on 24th January, 1939. On 19th January, notice of meeting was sent to the creditors and the trustees sent a second order for furniture. The petitioning creditors delivered the furniture on 21st January, 1939. On 24th January, 1939, the trustees sent a cheque for their first order. On 24th January, 1939, a resolution approving the appointment of the trustees to act under the deed was passed by the majority. Petitioning creditor did not vote on the resolution and later moved a resolution in favour of bankruptcy proceedings which

the petitioning creditors to rely upon the execution of the deed of assignment as an act of bankruptcy *Re A DEBTOR*

(1939) 2 All E.R. 338 (CA) =

160 L.T. 443 = 55 T.L.R. 620

—Assignment of, after-acquired effective against trustee. *See C*
TION.

(1939) 2 All.

108 L.J. (K.B.)

55 T.L.R.

—Creditor's petition — *S*
bankrupt proceeding out of j
ordered.

(2)—*Bankruptcy notice founded on the judgment—*
Competency

Where the judgment-debtor sought to set aside

BANKRUPTCY ACT, S. 26.

notice. *Re A JUDGMENT DEBTOR; JUDGMENT—*

BANKRUPTCY ACT, S. 5 (3)—*Petitioning creditor privy to appointment of trustees under deed of assignment—Validity of petition based on the deed of assignment.*

The petitioning creditors who were privy to the proceedings appointing trustees under deed of assignment should not take advantage of a situation in the creation of which they were themselves acquiescing parties. The case is one in which under S. 5, sub S. 3 of the Bankruptcy Act, 1914, no receiving order ought to be made, *In re A DEBTOR* [No. 382 of 1938]. *Ex parte THE*

—**Ss. 26 and 108 (1)—***Jurisdiction to rehear and review—If terminated by discharge in bankruptcy—Discharged bankrupt—Jurisdiction of Bankruptcy Courts to make binding orders on.*

On 30th June, 1936, the debtor applied for his discharge. At that time the receiver made an application under S. 51 (2) of the Bankruptcy Act for an order for the payment of a portion of his salary by the debtor to the trustee in bankruptcy. In the discharge application it was found (i) that the assets were insufficient to pay on his On ended in as pre- The application by the receiver was ordered on 17th December, 1936, directing the payment by the bankrupt a sum of £312 annually during the bankruptcy to be continued monthly until the Court ordered to the con-

paid. In fact the bankrupt continued to make the payment for several months after the order. Then the order the an end when repayment of t to the dis- lication the jurisdiction

to make it a condition, in granting the bankrupt his discharge subject to a suspension that the same be without prejudice to an order to be made under S. 51 (2) in

not prevented from becoming the basis of a bankruptcy effective, and (iii) "During bankruptcy"

COMPANY.

—Companies Act (1929), S. 75—*Re issue*
tires—If date of redemption could be postponed
 The debentures which are re-issued or the d
 which are issued in their place, must contain
 provisions as to redemption as the original d
 which have been redeemed. **ANTOFAGASTA**
AND BOLIVIA RAILWAY CO., LTD v. SCHRODER,
TIRAKS AND WATERHOUSE.

L R

—Companies A
 of property, rights
 tracts of personal s
 The words of S 1
 to cover a contract
 (1939), 1 K.B. 70.

CONSTITUTIONAL LAW.

directors by rotation

The articles of association provided that

1) and
 ich the
 of the

—Companies Act (1929), S. 170—*Re issue*
 best of non-payment of rates—If "Creditor" entitled to
 present winding-up petitions

Under S 170 a local authority which is in a position
 to recover rates is a creditor within the meaning of
 that section and is therefore entitled to present the
 petition for winding up of a company. *Re*
BUCKS

company and to whom return of capital was assured in
 21 years—If offence under S. 356 sub S. (1)—Igo
 rance that system was unlawful—If can excuse conse-
 quence of guilt

A company through canvassers from house to house

was constituted an offence under S. 356 sub-
 though the appellant, a director, did not

—Companies Act (1929), S. 170—*Re issue*
 Notes issued within six months under
 executed more than six months before win
 Validity of charge See **SALE OF GOODS—**
LIEN.

L R (1939) 1 K.B. 115

—Contract of employment of Managing Direc-
 tor for 10 years—Implied term—Alteration of
 articles giving power to remove director—Exercise of
 power—Liability of company for breach of contract

The S.F. company agreed by contract of 21st

COMPULSORY ACQUISITION OF PREMISES

—Subsidiary company carrying on business in same
 premises—Parent company—Whether entitled to the
 compensation

The parent company which had let out the premises

BREACH OF CONTRACT.

Held Mackinnon and Goldring L.J.J. (Sir Wilford
Greene, M.R., dissenting) granted that a company
 cannot be deprived of its right to alter its articles

(1939) 2 K.B. 206 = 160 L.T. 353 =
 55 T.L.R. 611 = 1939 W.N. 135

Domestic legislature—Effect on validity
 By 1935 four adjoining Municipalities in Ontario each
 of which had raised loans for local purposes on debentures

CONSTITUTIONAL LAW.

each of the Municipalities by the imposition of rates on the rateable property in the area comprised in the respective old Municipalities. By amending Act of 1936 the Finance Commission was abolished and its duties transferred to the Council of the Municipality of the City of Toronto. Similar provisions were made in relation to public utility commissions, by persons outside the province, and the authority conferred in

CONTRACT.

Edwards v. Maitland, Letters Patent 1921 and 1936. [1936] 1 All E.R. 101.

Crown so far as was consistent with the terms of the cession to alter the existing system of law though until such interference the laws remained as they were before the territory was acquired by the Crown. The principle

of representative institutions once made without the re

outside the province.

Held, the province has exclusive legislative power in relation to Municipal institutions in the province [S. 92 (8)]. If for strictly provincial purposes, debts may be destroyed and new debts created, it is inevitable that debtors should be affected whether the original creditors reside within or without the province. The path and substance of the Ontario Acts are that they are passed in relation to Municipal institutions in the province and so they are *intra vires*. As to their affecting the public utility companies, they will be just

Held, that Malta is a colony acquired by cession, that it is subject to legislation by the common law prerogative of the Crown and that the Letters Patent of 1936 issued after the revocation of the Letters Patent of 1921 was *intra vires* and legally enforceable. *SAMMUT v. STRICKLAND* L.R. (1938) A.C. 678.

CONSTITUTION OF COLONIAL HIGH COURTS—*Trinidad and Tobago*—"Acting Judge" if "pulsne Judge" of the Supreme Court capable of being member of Court of Criminal Appeal—Effect of ordinances.

Judicature Ordinances of 1880 the Supreme Court of Trinidad and Tobago consists of a Chief and three pulsne judges. There was provision for appointment of acting judges

ing the provisions as to legislative power under the British North America Act, 1867 that though the Province had the power of marketing and production of natural gas in question encroached on the Dominion.

Held, on a construction of the 1867 Acts, that the substance of the local gas business and that the licence fee was reserved to the Dominion.

1939 W.N. 196 (P.C.)

award—Action on contract—If barred by limitation—Jurisdiction of

the defendants' contentions upon which they would be entitled to succeed that because the arbitration award had been taken some

—Ceded territory—Prerogative of Crown to legislate—Grant of representative institutions—Reservation of territory—Prerogative of Crown to legislate—Grant of representative institutions—Reservation

also should be submitted to arbitration or an i

CONTRACT.

dent action brought, therefore, in some way they are precluded from putting forward this plea. The plaintiff raised a plea of estoppel also.

Held, (1939) 1 All E.R. 662 (Ch D), if one finds that in regard to a particular point, the parties were in agreement up to a moment when they executed their formal instrument, and the instrument does not conform with that common agreement then this Court has jurisdiction to rectify although it may be that there was, until a formal instrument was executed, no concluded and binding contract between the parties. In an action upon the award the defendants are not precluded from putting forward the plea that the agreement does not represent the true consensus of the parties on the facts the defendants were entitled to have rectification.

Held [affirming the decision of *Stansfield v. Stansfield* (1930) 1 All E.R. 662], the claim for the scope of the submission to facts there was neither estoppel would bar the claim of the respondents.

CRANE v HEGEMAN HARRIS & CO INC
(1939) 4 All E.R. 68 (C A)

—Arrangement for shipment of oranges to plaintiff a broker at London, reduced to writing—If term as to merchantable quality when the oranges arrived in London can be implied in the contract, to give business efficacy.

The plaintiffs had acted as brokers for the defendants on the terms that the defendants would ship and after shipment would draw upon the plaintiffs for a certain sum per case of the oranges shipped. The oranges were sold after their arrival in London for shipment of oranges a letter of arrangement was written by the defendants to the plaintiffs.

Held, in the circumstances to give business efficacy to the arrangement a term that the goods should be in such a condition as to be saleable in London must be implied into the contract. BROOM v PARDESS CO OPERATIVE SOCIETY

—Bill of lading issued from Newfoundland providing that contract shall be governed by English Law

CONTRACT

shipowners for damage caused to the goods admitted as due to the captain's negligence in navigation.

Held, the proper law of the contract is the law which

failure to comply with S 3 of the Newfoundland Act. On a true construction of the Statute, S 3 is directory and not obligatory and failure to comply with its terms does not nullify the contract contained in the bills of lading. [The *Torn*, (1932) P 78 not followed.] Even on the footing that the bills of lading were illegal, the respondent would fail either because it was a party to an illegality avoiding the contract or alternatively because the contractual exemption could not be ignored.

—Building contract—Architect placing order with sub-contractor—Privity of contract with owner of building—If established.

R G B an architect placed an order with the plaintiffs ostensibly on behalf of the defendant purporting to pledge the credit of the defendant. The plaintiffs claimed the costs of the work and materials from the defendant.

Held, on a construction of the standard building contract, there was no privity of contract between the building owner and any nominated sub-contractor and the architect had no authority to credit VIGERS SONS CO v (1939) 3 All E.R. 590 (K B D).

—Contract for purchase of timber—Insurance—Increase of premium (according to rates fixed by rating war risks to be for buyers cargo in Spanish ship (then bills liable for increased insurance premium of underwriter).

Contract for purchase of timber there was an insurance clause providing that any increase in premium payable for covering war risks (according to institute war and strike clauses in force at the time of attachment of the insurance) in excess of prevailing

premium rate, *Held* the buyers were liable to pay only the scheduled

and there was no special schedule rate. The sellers were not entitled to shipping to a belligerent. OULO OSAKA R & CO

(1939) 4 All E.R. 88 (K B D)
Contract for sale of pepper—Contract in of general produce brokers association that on seller admitting failure to the buyer should invoice back and ordering

eral Pro
e follow
may be
on that
contract
ntract to
fixed by
contract

CONTRACT.

price and invoicing back price to be paid in cash within seven days If before the maturity of any contract either party liable on the face thereof shall

the majority view in *Lancaster v Turner & Co. Ltd.*, (1924) 2 K.B. 222 and *Lang v Crude Rubber Washing Co.*, (1912) since reported in (1939) 2 K.B. 173 as footnote to this case, and

Held, that though the seller was the defaulter the buyer was bound to close by invoicing back the contract to the seller at the price and weight to be fixed by arbitration under R. 9 (f) notwithstanding seller had become insolvent before the mature contract given.

1939 2 K.B. 407.

Cleaning clothes—Duty to exercise due care and skill—Implied condition.

A suit of clothes of the plaintiff was cleaned by the defendants. When after a time the plaintiff put them on for four or five days he had an acute attack of dermatitis. In an action for damages, after finding that by some mischance or accident within the control of the defendants the suit got impregnated with some irritating substance which set up the plaintiff's dermatitis plaintiff must succeed *MAYNE v SILVERMEI NERS, LTD.* (1939) 1 All

Construction—First mortgage gold interest coupons—Construction—Gold Clauses (Canada)—Applicability to English creditors commenced action prior to passing of Act—Pr on similar bond—Judgment by default of defence—If operates as estoppel

The suit bonds were part of a set of bonds of £100 each (all in the same issued by the appellants on August 1, 1884 The relevant clause was—"The company for value received hereby promises to pay bearer or registered holder on August 1, 1934, the sum of £100 sterling gold coins of Great Britain of the present standard of weight and fineness at its agency in the city of London, with interest thereon at the rate of five pounds sterling per centum per annum payable semi-annually * * * on presentation and surrender of the interest warrants or coupons hereto annexed as they severally become due" Each bond had interest coupons annexed thereto in this form "The company will pay the bearer two pounds ten shillings sterling at its agency in the City of London or its office in New Brunswick on the first day of * * * being six months' interest on its first mortgage bond No Coupon No 100 for six months' interest payable on August 1 1934, was annexed to each of the respondent's bonds. The other coupons had been detached. On another bond of the series the respondents had obtained judgment in default of appearance and defence by the appellants declaring * * * and interest were payable in gold The p concerned 992 bonds of the series. After trial Court Gold Clauses Act, 1937, was pa

CONTRACT.

Canadian Legislature making tender of nominal or face amount legal tender in gold clause obligation.

Held, the bonds were not contracts for payment in gold coins or a demand to pay a bill, but were contracts for payment of which amount of which ring at the due of the Standard

second one be in substantially identical words "Gold Clauses Act, 1937 (Canada) must be confined upon its true construction to cases where the action to recover the amount due is brought in Canada and is not intended to have any application, when the action is proceeding elsewhere. The act cannot be held to diminish or destroy the rights of an English creditor after he has

L.R. (1939) A.C. 1 (H.L.) = 160 L.T. 137 = 65 T.L.R. 260 = 1939 W.N. 5.

Contract of service governed by Turkish law—Pension and salary—Whether payable in gold pounds—Unconditional receipts by employee for sum of Palestine pounds for balance of salary—If a release which extinguishes the claim.

The respondent a pensioner of a Bank in Turkey

their employees in Palestine at a fixed rate did not constitute an admission that salary was payable in Turkish gold pounds

Held, following (1937) A.C. 260, that the respondent was not entitled to be paid on the gold basis

Held, further, the unconditional receipts signed by the respondent for "sum of Palestine pounds, etc., for balance of salary" for a period, is clearly a release by which his claim was extinguished and he can no longer renew it. *OTTOMAN BANK v MENNI*

(1939) 4 All E.R. 9 (P.C.).

Contract to procure employment at yearly salary—Applicability of statute of frauds—Writing of necessary.

The two defendants agreed that, if the plaintiff would terminate his existing employment they would form and register a new company and would procure the plaintiff an appointment as sales manager at a salary of £350 per annum. In a suit for damages for breach of this con-

CONTRACT.

Held, the contract was one which could be performed within a year and therefore did not come under the statute of frauds [(1938) 4 E R All 311 reversed on the facts] **VERNON v. FINDLAY.**

(1939) 2 All E R 716 (CA) = 55 T L R 713

—*Damages*—Agreement to transport plaintiffs tractor and scraper to workshop by a named steamer and for some portion by land—Delay in the transport by the ship owing to difficulty in land transport to reach ship—Measure of damages for loss to plaintiff of use of machinery—*Tests*

Where defendants undertook to transport certain tractors and so (contractors) transporting machinery to the plaintiffs (the plaintiffs) the machinery by the delay.

Held (after discussing the rules of assessment of damages in torts and contracts law), the plaintiffs can recover as best as the Court as a jury can of the machinery as it would workshop during the period of fact of the rarity of such machinery and impossibility of mitigating damages by hiring other machinery has also

SUN

791

CONTRACT.

v MAURITIUS GOVERNMENT

(1939) 2 All E R 178 (PC)

—*Exceptions clause*—“Normal working of contract”—Commitments under other contracts if can be considered

In a contract for supply of coal to plaintiffs' ship there was a clause which provided “In the event of any cause or circumstance beyond the control of the sellers and for supplying of whatever description and wherever occurring which prevents the supply, etc., of the coal contracted for or the normal working of the contract, the sellers shall be entitled to relief from all obligations”

In an action for the return of the difference in price

Held, the sellers' commitments under other contracts with other buyers can be considered in construing

—*Football pool*—Rules in entry form making it binding in honour only and not legally enforceable—*Validity*

In an action to enforce a claim in a football pool the defence beyond putting the plaintiff to proof of various

Liability to registered holder—If in contract or tort

In or about September, 1929, certain authorised by Ordinance No 14 of 1929 were issued by the Receiver General of Maurit

could have no right to complain, because he accepted it

of ship—Impossibility of placed across a river on at broken through later and

Committee,

the vessel and the ship was due to prove the ship claimed the ship asserted that the d September and the master. In the arbitration the umpire found the charterparty was frustrated on 3rd September, and neither party had any

solely upon alleged breaches of contract and that the appellant should not have been non suited, **GUERARD**

CONTRACT.

claim against the other. On a case stated the Court held, (1) the question whether or not there was frustration on the facts as found by the arbitration was a question of law to be decided by the Court. The probabilities as to the length of the deprivation, when the event arises which is alleged to cause the frustration and not the certainty arrived at after the event are material. The umpire having found that the probabilities were that the ship would be kept up the river for an indefinite period the contract is frustrated. Subsequently the Japanese were able to charter the boom. **COURT LINE LTD. v. INCORPORATED. (1939) 3 ALL E.R.**

Frustration—Contract to pay charged on salary—Reduction of salary to £1,000 per year

as personal earnings necessary for the maintenance of himself, his wife and family

reduction in salary was a change in an essential condition, the continuation of which must have been contemplated as the basis of the contract. The circumstances, had been contrary to public policy to enforce bankruptcy the security surrendered. **KING v. F.**

(19)
103 L.J. (K.B.)
160 L.T. 484=£

Hire of telephones on certain premises for 14 years—Contract contemplating transfer of installation to other premises also—Destruction of original premises by fire—Liability of hirer for default.

Where, from the nature of the contract, it appears that the parties must have known, from the beginning that it could not be fulfilled unless fulfilment of the contract arrived at some particular time or continued to exist, the contract is treated as subject to an implied condition that the parties shall be excused from performance, before breach, the contract is frustrated by the perishing of the thing

CONTRACT.

the state of affairs, without the default of either party; but this implied term does not operate so as to avoid the contract *ab initio*. This doctrine of frustration rests on an implication arising from the presumed intention of the parties. The presumption must be a necessary one and not inconsistent with any express term of the contract. On the facts, as in the contract of hire of telephones by the defendants, other premises besides the

ation of price per pound
ping up the offer"—If

ly expressed, in that the
was offered per pound
plaintiffs who could not
that offer contained the
oped up the offer" there
**MARTOG v. COLIN AND
3 ALL E.R. 566 (K.B.D.).**

ing debt—Forbearance to
for good consideration—
'ection societies and social

In obtain payment of some

then in the defendant's case the court held that the defendant's social club and trade protection societies. At last

was obtained it is not one which the court will enforce. A promise to refrain from reporting to the turf club committee. But threats that
satisfy members of a
ties are threats to
a creditor is not
which director was directly or indirectly interested—
Director's nominee leaving to company and director
indemnifying lessor who was to account to director—
Lease if void

The Railway Act, S. 121, provided that "No person who is a director of the company shall enter into, or be

CONTRACT

fed S in respect of all liability as lessor, and S was to account for all the receipts to D

Held, D was not liable to account for the receipts to S
 contract was a
 REAL TRUST
 CO

Restitution by vendor for fraudulent misrepresentation—Rescission in integrum—Vendor's dealings with subject matter, if bar to remedy

The vendor of certain shares was induced to sell them by fraudulent misrepresentations on the part of the vendor as to the financial position of the company. In a claim by the vendor for rescission.

Held, the vendor is entitled to have the remedy by way of rescission and also restitution in integrum and the vendor's dealings with the fruits of his fraud cannot provide a bar to restitution SPENCE v CRAWFORD (1939) 3 ALL E.R. 271 (H.L.)

Restitution by a Borough Council for payment of a gratuity of £263 16 10 payable at 10s weekly to a retired servant—Payment for some weeks—Claim for immediate payment of balance of whole amount—Enforceability

In a claim by an ex-employee for immediate recovery of the whole of the gratuity which the employer a Borough Council had passed a resolution to pay in weekly instalments.

Held, the resolution is not a grant. It does not create nor supply evidence of a contract and it imposes no obligations on the defendant. As to the contention that the statute provided "a gratuity" and the resolution for weekly payments of the amount is ultra vires,

Held, a gratuity payable in instalments is not "several gratuities and in any event by Interpretation Act 1889, singular includes plural HOLLOWAY v POPLAR BOROUGH COUNCIL (1939) 4 ALL E.R. 165 (K.B.D.)

Restraint of trade—Covenant not to practise as solicitor within 15 miles of the town at any time thereafter—If enforceable

In 1933 a deed for defendant plaintiff was executed. By it covenants on the part of the "covenants that he will not at any time as a solicitor within a radius of 15 miles of the town of Hanley or of any client of the solicitor (plaintiff)". In 1937 the defendant left the plaintiff's employ and in 1938 being by the time an admitted solicitor or proceeded to set up his own practice in the next street. Plaintiff thereupon commenced the action to enforce the restrictive covenant.

Held, the combination of a restriction over an area so great as a radius of 15 miles and a restriction which is to extend during the whole of the life of the defendant is far beyond anything which may be said to be reasonably necessary for the protection of the plaintiff. Therefore the covenant is invalid and cannot be enforced DICKSON v JONES (1939) 3 ALL E.R. 182 (Ch D.)

Sale of goods. See SALE OF GOODS.
Subsequent foreign legislation—Effect on enforceability

CONTRACT OF SERVICE AS CONTROLLER OF CINEMAS

be an act which the contract requires to be performed in the act must have been present contract nothing sterling for payment in is no impossibility of is entitled to succeed. HUNGARIAN CREDIT BANK. (1939) 2 ALL E.R. 782 (K.B.D.)

[Affirmed by the Court of Appeal. See KLEINWORT & CO v UNGARISCHE BAUMWOLLE INDUSTRIE ETC (1939) 3 ALL E.R. 58 (C.A.)] = L.R. (1939) 2 K.B. 678

Work done at request of a person—Quantum meruit—Letter of express guarantee also given by that person—If affects the right to quantum meruit

A husband and person of no substance made a contract with the defendants to put up a shop front to premises which belonged to his wife making defendants believe that he was the owner of the premises. On discovering that the husband was a man of no means and the premises belonged to the wife the defendants refused to do the work. The wife then gave a letter of guarantee and asked them to proceed with the work. In addition to the sum covered by the guarantee some additional amounts were due as quantum meruit.

Held, the letter was a sufficient memorandum in writing and the wife was liable under the guarantee as well as for the sum due over and above it as quantum meruit EDMONDS & CO, LTD v FAGIN (1939) 3 ALL E.R. 974 (K.B.D.)

CONTRACT FOR THE SALE OF LAND—Letter by defendant to his solicitor—If suffices as a memorandum in writing

A letter by the defendant to his solicitors referring to the agreement for sale of the property being one written not for the purpose of obtaining legal advice but in answer to an inquiry by the solicitors to inform them of the fact that he had agreed to sell the property in question and so not privileged is a sufficient memorandum of the contract. SMITH BIRD v BLOWER (1939) 2 ALL E.R. 406 (Ch D.)

AS CONTROLLER
 necessary—Statute of
 cable—Termination of

service of a cinematograph group, whose parent company went into voluntary liquidation and on December 16 1936 the defendant became the parent company and the plaintiff was engaged as assistant theatre controller in London. He never had a written agreement. In June 1937, the plaintiff was told that he was to be appointed controller of all the defendant's theatres and his remuneration was to be £2000 per annum and he was told that the new service may be for two years. Plaintiff continued to receive the old rate of salary and was told that the arrears of salary would be paid at the time of reducing the agreement to writing. In 1937 control of the company passed into new hands and the plaintiff's services were terminated with a month's notice. It was contended that the contract was unenforceable by reason of the statute of Frauds 1677, S. 4 and the plaintiff could not even recover the proper remuneration for the work he had done.

COPYRIGHT ACT (1911), ss. 6, 7 and 10—Infringement—Damages for conversion—Measure of damages for conversion—Alternative—Commencement of proceedings—Constitution—Measure of damages.

The plaintiffs are the authors of the book "Reading and Venturing" and defendants, the publishers of a book "The Modern Practical Plumber". The defendants admitted that portions of four sheets of the book were copied from the plaintiffs' work.

among the price of their complete work and then attributing to the plaintiffs' copyright some portion of that price but was the value of the plaintiffs' work to the plaintiffs as contained in four sheets. (At the hearing

CRIMINAL TRIAL.

the Finance Bill such deed was income tax upon an irrevocable

On May 20, March 2, 1936,

an indorsement bearing date April 21, 1936 cancelling the powers of revocation and confirming the deed in all other respects. In June 1937, on behalf of the son of

in club premises for betting with book makers outside—If using the premises for betting purposes.

The mere use of the telephone in club premises for

1
Habitual criminal—Charge of—Nature of proof.

Held, the necessity for proof of a charge of being an habitual criminal ought to be insisted upon just as much as in any other class of case indeed if possible, more so, and the necessity is there just the same even though the accused has been convicted of the same class of charge on an earlier occasion. R. JONES

to make the woman a physical or mental wreck, the jury are quite entitled to take the view that the doctor who under those circumstances and in that honest belief, operates, is operating for the purpose of preserving the life of the mother and the burden is on the Crown to

Receiving stolen property.
To constitute an offence the accused should have

in majority verdict—Validity

In an appeal against conviction on the ground that the recorder instructed the jury that he could not release them until they had reached a verdict.

Held, it is of the greatest importance indeed it is fundamental that jury should not be led either by a desire to acquiesce or to avoid eccentricity, or to save time and trouble to represent themselves as holding an opinion which they do not in fact hold and the conviction must be quashed. R. v. MILLS.

(1939) 2 All E.R. 299 (C.A.)=

reference to the value of the whole volume the proportion was to be one-twentieth.)

Held, (1) that the remedy of damages for infringement provided by S. 6 and the remedy of damages for conversion provided by S. 7 are not in law mutually exclusive and that the plaintiffs are entitled to recover under both heads; (2) that the three years' limitation provided in S. 10 applies to a claim of damages for conversion under S. 7; (3) that the act of conversion was

the act of conversion (1936) Ch 323, affirmed (1938) Ch 174, reversed. CAXTON PUBLISHING COMPANY LIMITED v. SUTHERLAND PUBLISHING COMPANY.

108 L.J. (Ch) 5—L.R. (1939) A.C. 178 (H.L.)= 160 L.T. 17—55 T.L.R. 123—1938 W.N. 387.

CRIMES—Charge of unnatural offences—Post cards depicting sexual acts found in evidence.

Where the accused was charged with gross indecency, post cards depicting sexual acts, which were found on the accused, were admissible in evidence as things which a married man might well use as an adjunct to assist him in the commission of the crime, to rouse his own or for such a purpose. R. v. GILLING

(1939) 4 All E.R. 122 (C.C.A.)

—Forgery—Indorsement of false date on a deed to escape effect of pending legislation—Materiality of date at time of indorsement.

On March 2, 1936, H, a solicitor executed a deed of settlement with a power of revocation in favour of his son aged 6 with himself, his wife and W a chartered accountant as trustees. The deed was sent to the Inspector of taxes by W's firm with an application for repayment of a tax for 1935—1936 and £42-15-0 was repaid. The deed was sent back and was not delivered

Y. D. 1939—76

DIVORCE

—*Desertion—Refusal to commence cohabitation after expiry of agreement to postpone inception—If constitutes desertion*

A spouse who without excuse refuses to commence cohabitation after expiry of agreement to postpone inception—If constitutes desertion

—*Desertion—Repudiation of separation agreement owing to breach of provision as to access to child—Effect*

The obligation of a wife under a deed of separation to permit access to the child is one of the terms of the contract which go to the root of the contract. The unfounded objection to giving the husband the access to which he was entitled is a repudiation of the agreement. If the husband accepts the repudiation and the wife refuses to return, the desertion began on which a decree for divorce can be granted. *STOCKLEY v STOCKLEY*

(1939) 2 All E.R. 707 (P.D.A.)

—*Desertion—Spouses living apart under a deed of separation—If can be converted into desertion without a resumption of cohabitation—Elements necessary to constitute desertion*

It is possible in law for a separation which began by being consensual to acquire the character of desertion without a previous resumption. An apart commenced is repudiated by and in addition there is animus desertion on the terms of agreement by desertion but a bona fide willingness to resume cohabitation 'desertion' can supervene. Elements necessary to constitute desertion are separation animus desertendi and absence of the part of the spouse alleging desertion. If the desertion is inferred there should be a decree nisi. *R 258, Reversed PARDY v PARDY*

(1939) 3 All E.R. 770 (O.A.)

L.R. 1939 P. 288 = 55 T.L.R. 1037

—*Desertion—Unserved petition for divorce—If suspends period of desertion*

There was desertion by the husband from July, 1932 subject only to the fact that on 27-8-1935 the wife filed a petition for divorce. The petition was not served and dismissed on 1-7-1938 on the wife's application. The question was whether or not the filing of that petition had the effect of suspending the desertion for three years which would otherwise have been completed.

—*Dissolution of marriage on the ground of presumption of death—Absence under deed of separation—If a bar—Burden of proof*

A presumption of death arises if a person is absent under a deed of separation does not debar the petitioner from claiming a decree. It was for the petitioner to satisfy the Court that he had no reason to believe that his wife was living within the 7 years and on the facts the husband had produced evidence which entitled the Court to

DIVORCE

give a decree nisi. *PARKINSON v PARKINSON* (1939) 3 All E.R. 108 (P.D.A.) = L.R. 1939 P. 346 = 161 L.T. 251 = 1939 W.N. 261

enforce the payment of arrears of maintenance under an agreement of separation the Judge gave a finding that the wife had committed adultery and dismissed the claim. The summary proceedings against the husband were continued. The husband filed the summary jurisdiction alleging adultery. The husband filed the judgment in the previous case in proof of the wife's adultery.

Held, the county Court Judge's decision was conclusive proof that the wife had committed adultery and was binding on the justices though it would not be conclusive if the matter were litigated in the Probate Division. *WHITTAKER v WHITTAKER*

55 T.L.R. 1070 = (1939) 3 All E.R. 833 (P.D.A.)

—*Gift of money in contemplation of marriage by wife's father to husband and wife jointly—Dissolution of marriage—Rights of the spouses to the money*

The wife's father presented a sum of £1,000 to

had failed ab initio. Here the gift was to husband and wife jointly and each is entitled to half the amount. *KELNER v KELNER*

(1939) 3 All E.R. 957 (P.D.A.) = L.R. 1939 P. 411 = 55 T.L.R. 1058 = 1939 W.N. 323

—*Husband's petition based on desertion—Discretion statement by petitioner admitting adultery—Answer by wife denying desertion and alleging adultery—Discretion statement by husband—If admissible in evidence*

The evidence given by the husband of his own adultery and the discretion statement put in evidence in the wife's frame of mind as to a petition for divorce is against the husband on the ground that he did not expect to show that he was willing to receive a decree nisi. *1939 P. 221 = 55 T.L.R. 339*

—*Matrimonial Causes Act 1937, S. 7—Respondent alleged to have been pregnant at the time of marriage not by the petitioner—Husband if precluded from giving evidence as to non access before marriage*

In a petition for decree of nullity alleging that the wife was pregnant at the time of the marriage by a person other than the petitioner.

Held, the husband may give evidence that he was not the father of a child conceived before marriage. Rule in *Russell v Russell*, (1924) A.C. 687 not applicable. *JACKSON v JACKSON*

(1939) 1 All E.R. 471 (P.D.A.) =

DIVORCE.

108 L.J. (P.) 83 = L.R. 1939 P. 172 =
160 L.T. 365 = 55 T.L.R. 412 = 1939 W.N. 50

—Petition *secunde*

petition on the ground of desertion d

Held, following the

the effect of a petition

is to suspend the legal

living together. So to

abeyance there can in

r. WALTON, 108

—Prior petition

drawn—Subsequent petition for divorce on the ground

of desertion—Effect of first petition on desertion.

The petition for judicial separation created an interreg-

um of the period of desertion

—Procedure—One justice not hearing the whole of

the cross-examination of an im

Subsequent reading over the eviden

One of the two justices who he

from Court for the rest of the first

middle of the cross examination of

main allegation of adultery on

decision turned Three other les

gave evidence that day. By consent that part of the

was interrupted

the facts the association was acting as agents of

the London County Council in looking after the patient

EASEMENTS.

EASEMENTS—Collateral support—Corporation demo-
lishing servant tenement in pursuance of clearance

Collateral support—Right of custom or prescrip-
tion to let down the surface of adjoining mine without
compensation for damage—If enforceable.

—If enforceable, the defendant is liable to restore the damage.

ness of such right.

Right of way—Proof of user with carriages
drawn by horses—If extends right to use of the way
for vehicles.

—If a user over the required

Support to adjoining premises — Removal
of premises — Clearance order

t cannot use a
to demolish his
which he could
support to which
without providing

N.
R. 610 (Ch D) =
160 L.T. 548 =
1939 W.N. 202.

ence granted by
er in the well by
isance—Necessity

ELECTION

Per *Luxmoore L J*—*De facto* possession of an easement is not sufficient to found a claim for disturbance (1938) 4 All E R 592 Affir PAINE & CO LTD v SR NEOTS GAS & COKE CO

(1939) 3 All E R 812 (C A)
55 T L R 1062—1939 W N 329

ELECTION—*Commencement of action based on contract—Waiver of tort—Subsequent action on same facts based on tort against third party—If barred*

In November, 1931 certain debtors sent to the plaintiff company an order cheque for £1,900 *E*, the Secretary of the plaintiff company without authority in the name of the plaintiff company in F G Company MFG paid the che bankers the defendants who collected it was a simple case of conversion by *E* and the matter stood there not only MFG defendants would be liable in conversion of the cheque On May 13 1935 plaintiff writ against M F G for the £1900 as money lent or as money had and received to the plaintiff's use M F G went into liquidation and a proof by the plaintiff for

cheque

Held the election to institute the proceedings against MFG for money had and received waiving the tort prevents the plaintiff from reviving the claim in tort so as to pursue the remedy in tort against the defendant bank LTD

ELECTION OF ALDERMAN *Local Government Act, 1933 S 22 (2)—Alderman also Mayor—If entitled to vote*

of voting and not words of exclusion and if he has another capacity entitling him to vote under the Act he is left the right to vote in that other capacity BURDON v

EVIDENCE ACT (1938) S 1

The appellant purchased from *H* the liquidator of the respondent company one of the farms by an agreement dated 3rd February, 1927 An advertisement by the firm of land agents of which also *H* was a member appeared in the East African Standard published on 29th January 1927 which stated 'Maize and wheat proved on property The appellant claimed that he relied upon the assurance of *H* and on the statement in the advertisement that the land was proved for wheat and that he found the land had not been proved for wheat and was useless for wheat growing and that he

pendent company was produced and accepted in evidence by the supreme Court of Kenya and upheld by the Court of Appeal On appeal to the Privy Council plainly inadmissible either in cross examination It is no statements may be used against but evidence of statements on other occasions by the witness in confirmation of his testimony cannot be given GILLIE v FOSHO LTD

(1939) 2 All E R 196 (P C)

EVIDENCE ACT (1938) S 1—Evidence—Statement made on oath to a police officer by a person since dead—

evidence at the police court inquiry about the accident and the justice's clerk made notes of the evidence but it was not signed by the deceased witness When those statements were tendered in evidence

Held both the statements on oath to a police officer and the deposition in the police court were admissible in evidence BULLOCK v BORRETT

(1939) 1 All E R 505 (K B D)

56 T L R 408 1939 W N 49

—**Ss 1 and 1 (5)—Statutory declaration by person immissibility**

was sought to adduce in evidence a statutory made by a partner who was beyond the seas king steps to examine and cross examine r by letters of request) and while there was tner able to depose was not tendered on the his testimony is not to be relied upon declaration cannot be adduced in evidence it should have the primary evidence of a n be seen and upon whose demeanour the form an opinion and who can be cross INFIELDS LTD v ROSEN

(1939) 1 All E R 121 (Ch D)—
Ch 163—55 T L R 377—1939 W N 30

(3)—*Statement by defendant to police after accident—Admissibility as evidence damages for injuries in the accident* defendant who was driving a motor car, immediately causing injuries to the plaintiff, statement to the police In an action for

EXECUTORS.

admissible by reason of the provisions of sub-S. (3) of that section which provides "Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact"

EX.

The prosecution has to prove that the accused was knowingly in possession of something which is an explosive substance within S 9 of the Act and further that the possession was in circumstances giving rise to a reasonable suspicion that that possession was not for a lawful object. When so much is proved it rests on the accused to show if he can that he had the substance in his possession for a lawful object. It is not necessary for the prosecution to give evidence of or prove knowledge by the accused of the explosive nature of the substance R. v. DACE.

(1939) 2 All. E.R. 641 (C.A.) =
160 L.T. 652 = 65 T.L.R. 670 = 1939 W.N. 166
**FOREIGN JUDGMENT AGAINST WHICH
APPEAL IS PENDING**—Effect on application to set
aside bankruptcy notice based on it—Foreign Judgment
(Reciprocal Enforcement) Act, 1933

An appeal was preferred against a receiving order based on a non compliance with a bankruptcy notice which was based on a foreign judgment registered under the Foreign Judgments (Reciprocal Enforcement) Act 1933. It was contended that a foreign judgment was invalid under the Foreign Judgments Act as an appeal was pending in the Foreign Court and the successful litigant could not enforce it by execution. The judgment was registered on 14th July, 1938 and the appeal in the French Court was entered on 14th February, 1939. A summons by the debtor was pending in the King's Bench Division for an extension of time to have the registration set aside.

Held, at the date of the registration, there was an enforceable judgment and the summons for extension of time was valid.

FEUD.

FRAUD—Question of—If can be referred to the Official Receiver.

GAME—Legality or otherwise—Question—Whether for judge or jury.

It is the duty of the Judge and not a jury to decide whether or not a game is unlawful R. v. SALISBURY (1939) 1 All. E.R. 250 (C.Cr.A.).

GARNISHEE ORDER—If attaches to amounts received by garnishee after service of order.

The garnishee, a Bank had an order served upon them in the usual way under County Court Rules O 27, R. 1 attaching any debt owing by the bank on the date of service to the judgment debtor. On receipt

GUARANTEE.

of the order, the bank opened a new account for the particular customer in which the new credits, due to payments in, appeared.

Held, A garnishee order attaches no debts which do not exist at the moment the order is made and served

(1939) 2 All. E.R. 10 (C.A.) =
108 L.J. (K.B.) 266 = L.R. (1939) 1 K.B. 585 =
160 L.T. 261 = 65 T.L.R. 489 = 1939 W.N. 85

GIFTS—Donatio mortis causa—Delivery of Bank deposit book with other chattels—Effect.

During her last illness the deceased on one occasion asked the donee to replace her black bag in her own wardrobe saying "If I should die, then you are to get everything in this bag—the jewellery and also what is in the envelope" (the envelope contained a deposit book of the Midland Bank with £933 8 0 to her credit) On a second occasion the deceased had the bag brought out and said "Put this bag in your wardrobe so that I can keep my eye on it, should I die, I wish you to have the bag and everything that is in it."

Held, on a second occasion, the handing of the bag with the direction to place it in the donee's wardrobe was a sufficient delivery and the bag with all the articles except the pass book passed under a valid *donatio mortis causa*. As to the pass book and the £833 8 0

L.R. 1939 Ch. 922 = 161 L.T. 166 = 65 T.L.R. 986 =
1939 W.N. 303.

—Gift of money to husband and wife jointly—Father of wife in contemplation of marriage—Disolution of marriage—Rights of the spouses to the money See
DIVORCE—GIFT OF MONEY IN CONTEMPLATION OF MARRIAGE

L.R. (1939) P. 411 =
(1939) All. E.R. 957.

GUARANTEE—Acceptance of bills of exchange by

once posted from the as the bills d to the re which on t. MEEK (K.B.D.).

—Continuing guarantee applicable to "the balance that is now or may at any time hereafter be owing"—Limitation—Commencement.

Where a guarantee is to apply to the balance which at any time thereafter is owing, the question of limitation could only arise in regard to the time which had elapsed since the balance guaranteed and sued for had been constituted, and the number of years which have expired since any individual debt was incurred is immaterial WRIGHT v. N. Z. FARMERS' CO. OP.

(1939) 2 All. E.R. 701 (P.C.) =
L.R. 1939 A.C. 439 = 65 T.L.R. 673 =
1939 W.N. 162.

—Joint sureties—Claim for contribution—Counter-claim for damages available to principal—If a defence against claim for contribution.



HIGHWAYS.

B & Co supplied a Fordson tractor to the M F I who hired it to Mitchell & Co. The plaintiff and defend-

who sued purely on the hire purchase agreement. A defence was put in by the present defendant in which in effect he set up a counter-claim for breach of warranty etc., but the present plaintiff submitted to a judgment and paid the money. The present suit was for contribution to which the defence set up was that there was a counter-claim or a cross claim which was available to the principal.

bringing in the principal whose claim it really was
WILSON v MITCHELL

(1939) 2 All E.R. 869 (K B D) =
L R (1939) 2 K B 869—55 T L R 849 =
1939 W N 203

HIGHWAYS—Extent of right—Adjoining land—Presumption regarding—Rebuttal—Trespass on adjoining land by highway authority—Liability for trespass

to pass and repass, the whole portion is deemed to have been dedicated to the public. When, however, a portion of the whole is a ditch which *prima facie* is not adapted for the exercise by the p repass, the presumption part of the highway will be rebutted but the one the ditch is part of the highway.

Held, that the presumption had not been rebutted in the particular case and that the highway entering upon the adjoining land and lay out on the owner's permission had rendered liable for an action for trespass.
BEDFORDSHIRE COUNTY COUNCIL

(1938) 1 Ch 944

Nuisance—Posts put upon highway—Obstruction to normal use of highway—Suit for injunction—Maintainability—Test as to nuisance

which obstructs in the smallest degree the exercise by

Held that an action could be maintained the posts to be a nuisance and for an
ATTORNEY-GENERAL v WILCOX

(1938) 2

INCOME-TAX

HIGHWAYS ACT (1835), S 72—Lorry catching causing damage to highway—If under S 72 of the Act

er was not guilty of any wilful the causation of the fire his conviction for an offence under S 72 of the Highways Act, 1835 must be quashed
TUNNICLIFFE v PICKUP

(1939) 3 All E.R. 297 (K B D)

HUSBAND AND WIFE—See also DIVORCE

Second marriage of woman in her maiden name (with banns published in that name) when first husband not heard of for more than 7 years—Presumption of death of first husband—Effect on validity of such marriage

A woman whose previous husband had not been heard of for more than 7 years having married a second husband started proceedings against him for adultery, desertion and failure to maintain her. The second marriage took place in her maiden name and the banns were published in that name.

Held, (1) Law presumes a person who has not been heard of for over 7 years to be dead. Once it is shown that the wife has not heard of her husband for 7 years that presumption arises though it is rebuttable. The person relying on such presumption must prove reason ent of inten banns publi

which for years she had been commonly known and that there was no intention to conceal her identity
CHIPCHASE v CHIPCHASE

(1939) 2 All E.R. 225

As it is right to allow evidence of non access in cases where the parties are living apart under a deed such evidence in the form of a

743 (P D A) =
57 T L R 573 =
161 L T 230

INCOME TAX—Amounts paid to secure the benefit of a compromise—If a permissible deduction

The claim was to deduct from taxable profits (1) £7,500 paid by the company to one of the directors

Companies—Dividend paid to a shareholder by

paid as he com-

pose of

The

f which

other

INCOME TAX.

With the 1st instalment of the annuity of £ 9300 the company redeemed some of the debentures held by

holding the 98 shares. In pursuance of a resolution by that company the same day the cheque was re-endorsed to the company which issued it.

Held, the condition as to repayment as a loan of the

LAND REVENUE COMMISSIONERS v. MARBOB, LTD

(1939) 3 All E.R. 309 (K.B.D.)

L.R. (1939) 2 K.B. 87

Company—Shares issued to employees at far remuneration for services—Premium which the shares would have brought to the company if

If deductible against profits.

A company, by special resolution increased its capital by the creation of certain redeemable shares, and 400,000 new ordinary shares, and 10,000 of such shares were reserved for employees of the company at such times and upon such terms and conditions, as the directors should determine. 6,000 of those shares were allotted to the employees at par as remuneration for services rendered. If the shares had been issued to the public a premium of £1 18 9 per share would have been obtained by the company.

Held, reversing (1938) 4 All E.R. 689, which would have been earned is deductible taxable profits of the company. *LOWRY* :

DATED AFRICAN SELECTION TRUST, LTD.

(1939) 1 All E.R. 353 (C.A.) =

108 L.J. (K.B.) 374 = 160 L.T. 220 = 55 T.L.R. 413.

Dividends on preference shares in an Indian Company holding shares in two British Companies whose profits had suffered British Income tax—If could again be subjected to British Income tax.

The respondent is the holder of 525 preference shares of Rs 1000 each in a company registered in Calcutta which is the holder of ordinary shares in two companies registered in England. The whole of the profits of the two British Companies were assessed to British Income tax. The Indian Company received the dividend after deduction of British Income tax. The Indian Company also received other income which had not suffered deduc-

duction for Income tax amount of the dividend cent. of the dividend had Income tax could not be

preference has suffered question of profits out of tax is unjust or contrary to the statute in exacting tax for the first time from him and respondents claim for abatement fails. *BARNES v. HELY HUTCHINSON* (1939) 3 All E.R. 803 (H.L.) = 161 L.T. 181

Y. D. 1939—77

INCOME-TAX.

Finance Act, 1922, S. 21—Income of company deemed to be income of "members"—Person with an

on to take shares, is capital of the company within the meaning of Finance Act, 1922, (1939 1 All E.R. 148, affirmed.) S. 21(7) and as such a mem- SION

bound properly to which child is enti-

was sums and

Held, that it cannot be said that the child is entitled

See (1939) 4 All E.R. 186.) Finance Act (1922), S. 21 (6)—Subsidiary of foreign company—If "subsidiary company" within S. 21 (6)—Direction as to undistributed income" of such company

Finance Act, 1926, Ss. 32 and 33—Amalgamated company—If entitled to deductions in respect of losses and wear and tear to machinery to which the companies which were amalgamated were entitled

Two companies A and B were amalgamated into a new company in 1930. Companies A and B continually made losses in respect of which they were unable to obtain relief under Income Tax Act, 1918, S. 34. The to give effect to the machinery which it was carried forward by the by the amalgamated

the plain com- ice Act, 1926, trade set up or commenced at the date of its acquisition. The company is another legal persona and cannot claim the right to deduction in respect of losses and wear and tear of the old companies, UNITED STEEL COMPANIES, LTD v. CULLINGTON.

(1939) 1 All E.R. 451 (C.A.) = 108 L.J. (K.B.) 388 = L.R. (1939) 1 K.B. 614 = 160 L.T. 215 = 55 T.L.R. 417 = 1939 W.N. 62.

Finance Act (1931) S. 7—All Schedules R. 20, Dividend received from company "without deduction of tax"—If to be "grossed up for purposes of sur tax,"



INCOME TAX.

The appellant was the holder of 20,000 shares of £1, all issued and fully paid company. In March, 1934, a dividend was paid. In his return of total income purposes the appellant included the sum of £21,000 (his dividend). The Assessing Commissioners added £7,000 as representing income-tax in respect of this dividend.

chooses to pay its dividends without deduction the dividend is gross even though it is paid out profits and there is no scope for "grossing up" already gross (1938) 2 K.B. 109 = (1938) 1 All. E. Reversed. *CULL v. INLAND REVENUE COMMISSIONERS* (1939) 3 All. E. 761 (H.L.) = 161 L.T. 173 = 55 T.L.R. 1049

—Finance Act, (1936), S. 21 (1).
Disposition in favour of children by

share
Held, this was not a *bona fide* commercial and was a disposition or an arrangement in of a disposition within the meaning of S. 2 though the settlements are made through tion of

pany—
share h

Held, a proportion of $\frac{71322}{71322}$ of £1284 should be apportioned to A shareholders and the balance to B shareholders. INLAND REVENUE COMMISSIONERS

INCOME-TAX.

—Finance Act, 1936, S. 21 (1).

r. 21—Mortgage acting as solicitor for mortgagor in a sale—Retention of money out of sale proceeds for interest due to him—If solicitor agent of mortgagor bound to he meaning of All

"upon the payment
the person by or
made shall deduct
amount of the tax

Held, the appellant received the purchase money as solicitor for the mortgagor and in appropriating it to his as the person through the mortgagee. The tax thereout and to

assessment on one part
farm lands BOMFORD
1 All. E. 259 (K.B.).

—New partnership exercising option to treat trade of old partnership as discontinued—Loss in old trade of

Held, the partnership was not a

er cent. of
when the
ership of it
capital or

1) that new
Company
ein should
a brick company the
and (3) that on re
e of the freight) the
way Company, held,
ich resale need not be
Respondents' profits

E.R. 220 (K.B.) =
, 59 = 65 T.L.R. 828.

of contract in ordi-
nary course of business—If profits of business
The appellant company, received a payment of £4500 for terminating a contract which was made in the ordinary course of business

INCOME TAX.

Held, the payment must have been in respect of the profits to have been liable to income tax.

—Sums

deficiency in institution in proceedings—

1918, S. 27—

merely expenditure

husband for surtax

On a case stated by the Commissioners *held* that sums paid (in pursuance of proceedings) by a husband in wife's income for institution, do not fall within S. 27 and are merely expenditure of the payer's income and are not proper deductions in arriving at the total

INSURANCE.

lease to deliver up the whole demised premises with all additions and improvements.

—C. 40, Sch. E—Consideration received for
for—If assessable

and looked at from the company's point of view the

Income tax Act, 1918, S. 27, for—If survives against estate of deceased persons.

The claim for penalties under Income tax Act, 1918,

Affirm PRENDERGAST v CAMEFON.

(1939) 1 All ER 223 (C.A.) = 160 L.T. 210.

—Responsibility for the loss of guest's duty to take reasonable care of his

law an inn-keeper is responsible to his guest if his goods are lost or stolen while on the premises and the liability exists apart from any

succeeded to the wholesale business

A retail boot and shoe business was carried on by the respondent company who also owned the whole of the capital of two subsidiary companies whose whole business was assigned to the respondent company's share

Held, The wholesale business of the respondent company ceased and the respondent company succeeded to the wholesale business under the Act, 1918. LAYCOCK v FREEMAN.

WILLS. 108
L E (1939) 2 KB 1 (C.A.)
22 T.C. 28

nary care which a prudent person would take and so the guest was entitled to recover damages for loss of her jewels etc by theft. SHACKLOCK v ETHORPE LTD.

(1939) 1 All ER 279 (H.T.) = 55 W.T.R. 206

INSURANCE

CO., LTD

(1939) 1 All.E.R. 95 (C.A.) =
55 T.L.R. 35 = 1939 W. N. 26.

—Goods held on commission by bailee—Insurance by bailee—Loss by fire—Extent of insurance—Respective rights of wool grower and wool broker in the insurance money.

INSURANCE

a lawful contract voyage was seized by Spanish insurgents. Plaintiffs claimed against insurers as on a total constructive loss

Held, the captain of a neutral ship or the owner of a neutral ship or the owner of a ship belonging to a country at war, is not guilty of wilful misconduct if

from that insurer shall have
of all proceedings against

"Damages relate to payment"

44 Com. Cas. 146 = 108 L.J. (K.B.) 313 =
L.R. (1939) 1 K.B. 748 = 160 L.T. 402 =
55 T.L.R. 104 = 1939 W.N. 104

—Marine insurance—War risk policy anticipated freight—If insurable interest—Seizure of vessel by Spanish insurgents while on lawful voyage—Constructive total loss—If owner or master of

Admissibility.

The respondent an insurance company was sued under the guarantee which it gave to the appellant at the request of the charterer to pay any contribution in general average, salvage or special charges due in respect of the cargo and to admit a loss of freight in

The appeal
ers at certain
n the contract
a usual and

L.R. 100 reversed, **KLARION SMITH LINES LTD. v. BLACK SEA AND BALTIC GENERAL INSURANCE CO., LTD. THE INDIAN CITY.**

(1939) 3 ALL E.R. 444 (H.L.)=

55 T.L.R. 929=161 L.T. 79=L.R.

INSURANCE OF GOODS AGAINST RISKS—Inability to recover skins dressing owing to bankruptcy of the If "fortuitous or accidental loss or" by the insurance.

Plaintiffs had insured their goods (skins) against all and every risk, what-soever, however arising Popper, a firm of Berlin employed by plaintiffs to dress their

a de facto foreign Government claimed to be in possession or entitled to possession—Validity.

The Republican Government of Spain requisitioned

ment entered a conditional appearance. On 28th March, 1938, General Franco issued a decree requisitioning the ship for public services. On 11th April 1938 the vessel was requisitioned but the vessel 15th April, the notarial declaration

(1939) 2 ALL E.R. 605 (H.L.)=

L.R. (1939) 2 K.B. 724=55 T.L.R. 1047=

the Court.

the Court held that the National

not cover the intentional demolition and the plaintiff cannot recover **DAVID ALLEN & SONS BILL POSTING LTD. v. DRYSDALE**

(1939) 4 ALL E.R. 113 (K.B.D.)

INSURANCE POLICY—Construction—Conditions that "insured shall give all such proofs and information as may be reasonably required" and "no claim under policy payable unless the conditions are complied with"—Refusal to give information required—If debar the claim—Giving the information during cross examination—If sufficient.

A term in an insurance policy in effect required the assured making any claim to furnish all such proofs and information as may be reasonably required by the

GOVERNMENT OF THE REPUBLIC OF SPAIN v. S.S. "ARANTZAZU MENDI" L.R. (1939) A.C. 256 (H.L.)=

108 L.J. (P) 55=160 L.T. 513=

55 T.L.R. 454=1039 W.N. 69.

JURISDICTION—Declining jurisdiction—If case heard and determined—Mandamus

On an application for approval of alterations to licensed premises the justices declined jurisdiction in so far as the bulk of the alterations was to premises not already licensed. On appeal.

Held, the justices had jurisdiction provided the premises when altered will still be in the ambit of the licence. The justices cannot be said to have heard and determined the case when they declined jurisdiction.

LANDLORD AND TENANT.

108 L J. (K B) 555=L R (1939) 2 K B 515=

160 L T. 551=65 T L R 610-1939 W N 169

LANDLORD AND TENANT—Removal of gas fire

in a room in pre

pipe—Escape of

of landlord on c

Plaintiff and

defendants' tenant

premises removed

from the grate lea

was turned off at

husband slept in

been removed, whi

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LEASE—One assigns of part of a lease forced under

stress of liability to distress to pay the rent payable by

the assignee of another portion—Right to recoupment

The defendant an assignee of a portion of leasehold

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LIBEL AND SLANDER.

—Offer to take lease—Acceptance subject to leave

to be drawn up by lessor's solicitor—Enforceability

A letter was sent in reply to an offer to take on lease

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the end of the period from the superior landlord,

The plaintiffs sought

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L R (1939) 2 K B 102-101 L J 200

65 T L R 1089

LIBEL AND SLANDER—Plea of justification—

for particulars when made See PRACTICE—

(1939) 2 All ER 605 (C A)

Statement complained of true about existing

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down in *Hulton & Co v Jones* (1910) A C 20 is

le It does not matter what the writer of a

ins or intends to mean. His meaning is to be

d from the expressions which he uses and which

into permanent form on paper or some such

NEWSTEAD v LONDON EXPRESS NEWS-

LTD (1939) 3 All ER 263 (K B D)=

108 L J (K B) 618=L R (1939) 2 K B 317=

161 L T 236-55 T L R 679-1939 W N 184

[Affirmed by Court of Appeal

See (1939) 4 All ER 319 (C A).

—Liability of a company to be sued or prosecuted

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—Slander—Saying 'you are a convicted person'—

Basis on which words actionable—Proof of special

damages—If necessary

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LIBEL AND SLANDER.

exclude him from society that damage is presumed and not that the plaintiff is put in jeopardy. The words were capable of being construed as imputing a crime for which the plaintiff has been or could have been sent to prison. **GRAY v. JONES**

(1939) 1 All E.R. 798 (K.B.)=
160 L.T. 361=55 T.L.R. 437.

—*Slander—Statement to plaintiff overheard by co-employees—If privileged.*

The whole essence of liability for libel or slander is the publication of the defamatory statement to some third person, not the use of language of a defamatory kind to a person complaining of it. The privileged occasion must arise because the publication of a statement in question is made to a person to whom a speaker has a duty or interest to receive it.

MASTER AND SERVANT.

Held, that there was no such implied term and it ought not to be implied in a contract unless, upon the facts, it was necessary to imply such a term.

—*Common employment—Applicability of doctrine to bus conductor injured by tram owned by his master—Test.*

In a claim by the plaintiff—a bus conductor employed by the London Passenger Transport Board for injuries due to a collision caused by the negligence of a tram driver—*Held*, that the doctrine of common employment applied.

—*Contract—Restraint of trade—Covenant restricting servant setting up rival business within a radius of 5 miles—Validity.*

The plaintiffs are proprietors of a number of butchers shops one of which at 62, Mills Road, was managed solely by the defendant from 1919 till October 1938. When, after 9 or 10 years of service the defendant bought a shop some 8 doors away in which he established his wife in a millinery business, the plaintiffs to protect themselves against the possibility of defendant starting a rival business entered into a contract with the defendant. It contained a stipulation that in the event of the termination of the contract of service from any cause the defendant will neither enter into or carry on or in any way assist or be concerned in the carrying on of a business of the same nature as that carried on by the plaintiffs.

(1939) 2 All E.R. 85 (U.A.)

—*Employee of a sub-contractor—If entitled to claim damages against head contractor for injuries due to breach of statutory duty owed to his immediate employer.*

The employee of a sub-contractor of the defendant a building contractor had erected a scaffolding which broke under the plaintiffs height in the course of his work. In an action for damages for injuries by the plaintiff against the head contractors

employer to the workmen he employs and the plaintiff

LICENSE—Motor vehicle—General trade
Use of vehicle for purposes not authorised by
Offence. See **MOTOR VEHICLE—GENERAL TRADE**
LICENCE. (1939) 1 All E.R. 143 (K.B.)

LIMITATION—Continuing guarantee—Commence-
ment of limitation See **GUARANTEE**
(1939) 2 All E.R. 701 (P.C.)=
L.R. (1939) A.C. 439.

MARINE INSURANCE—Freight insurance—Con-
struction total loss—Liability for loss of freight caused
by loss of time in repairing ship.

The vessel was chartered on 23rd September, 1936, to proceed to Venezuela, etc., and load cargo for ports in United Kingdom. On 18th October, 1936, the vessel left for Rotterdam for the purposes of repairs before starting in ballast on the voyage to Venezuela. While

constructive total loss of the ship by a peril insured against and that the insurance was against the happening of that event. **ROBERTSON v. NOMIKOS, LTD.**

(1939) 2 All E.R. 723 (H.L.)=
108 L.J. (K.B.) 433=L.R. (1939) A.C. 371=
160 L.T. 542=55 T.L.R. 779=1939 W.N. 192

MASTER AND SERVANT

See also (1) **TORTS**

(2) **WORKMEN'S COMPENSATION.**

—*Admission to staff endowment and pension scheme—Right to permanent employment—If to be implied.*

The plaintiff whose services with the defendant company was terminated with 3 months' notice claimed that by coming into the endowment and the company he became a member of staff and an implied stipulation to that effect was implied in the contract of service.

MONEY LENDERS ACT (1927), S. 6—Clause in guarantee securing repayment of advance not set out in memorandum—Effect—Mere reference to guarantee—If sufficient.

Plaintiffs, registered money-lenders advanced £50 to the defendant on the terms of repayment by certain monthly instalments, the repayment being secured by a bill of sale and a guarantee executed by guarantors.

amount of the loan and interest on the unpaid part thereof.

Held, the mere reference to the fact that it was a term of the contract that a guarantee without any reference to the presence of the guarantee is insufficient to satisfy the Money-lenders Act, 1927. The contract was therefore unenforceable. **CENTRAL ADVANCEMENT COUNT CORPORATION, LTD. v. MAH** (1939) 3 All. E.R. 695 (C.A.).

S 6—Money lender—Money lent jewellery deposited—Contract unenforceable—non-compliance with S. 6 of Money-lenders Act—Right to return of jewellery without payment.

Plaintiffs borrowed from defendants money lenders, on the security of which they deposited with them. The contract was unenforceable owing to non-compliance with S. 6, Money Lenders Act and a return of the jewellery.

Held, the defendants are not entitled to keep the jewellery and enforce payment. A distinction must be drawn between a contract (1907) 1 Ch. 302 and a cash contract is unenforceable. C.

108 L.J. (K.B.) 276.

MONEY LENDING—Agreement to finance hire purchase transactions—If "money lending" transaction. See SALE OF GOODS—VENDORS LIEN

L.R. (1939) 1 Ch. 531

MORTGAGE—Contract of sale by mortgagee in pursuance of his powers under mortgage—Rescinding from contract and resale at a lower price to new purchaser—Mortgagee if accountable for purchase money under first sale.

There is no legal or equitable principle upon which can rest the proposition that a mortgagee who has contracted to sell in exercise of his power of sale, and who (the land not having become vested in the purchaser) rescinds the contract, is accountable to the mortgagor for purchase money which he has never received. **WRIGHT v. N. Z. FARMERS' CO. OP.**

(1939) 2 All. E.R. 701 (P.C.)=
L.R. (1939) A.C. 439=55 T.L.R. 673=
1939 W.N. 162

to mortgages.

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inte
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agre
at S.
period of forty years by half yearly instalments, the

Y.D. 1939—78

NUISANCE.

whole money to become payable on any default. On 6th November, 1931, a mortgage embodying the agreement was executed in favour of the appellants. On 25th February, 1937, the respondents issued a writ claiming to be entitled to redeem the mortgaged property on the usual notice notwithstanding the provision for

torious.

Held, reversing the decision of *Luxmore, J.*, in (1938) Ch. 741. The proposition that a postponement of the date of redemption is only permissible if founded. Even nothing unreasonable period of forty

MOTOR INSURANCE—Misrepresentation and non disclosure—Effect on policy

A person who had a number of convictions for dangerous driving and care and mis stated only 19½ finding his thing a car insured as he had no interest in but the policy having

been obtained by mis statement and concealment it may be avoided and brings them under no liability to indemnify under the policy. The contentions were upheld. **GUARDIAN ASSURANCE v. SUTHERLAND**

(1939) 2 All. E.R. 246 (K.B.D.)=
55 T.L.R. 576=1939 W.N. 122

MOTOR VEHICLE—General trade licence—Use for purpose other than authorised by licence.

Where a person holding a general trade licence for a motor vehicle, used it for towing a trailer carrying a motor boat for overhauling the shaft, etc., at the premises of the licensee.

Held, the use for conveying the boat was not "any purpose" connected with the business as a manufacturer, or repairer or dealer in mechanically propelled vehicles under the licence and it was an offence. **DARK v. WESTERN MOTOR & CARRIAGE CO. (BRISTOL), LTD.**

(1939) 1 All. E.R. 143 (K.B.D.)

NEGLIGENCE See TORT—NEGLIGENCE

NUISANCE—Created by trespasser—Liability of

erty by another, mere failure on his part, or even refusal to remove the nuisance does not involve him in liability on the ground of some duty of *Bruton, J.*, (1938) 3 Denfield v. St. Missions.

(1939) 1 All. E.R. 725 (O.A.)

NUISANCE

Lessee for term assigning the term without re-assignment—Absence of Cause of action for nuisance—Effect on

Defendant became the tenant of a flat for a term of 10 years. In February, 1935, he assigned the term to S, who later left the premises and could not be taxed. Defendant re-entered the premises but no re-assignment was executed by S. The landlords the plaintiff had installed an $\frac{1}{2}$ H.P. electric motor in the flat for heating and circulating water. Defendant complained of the noise and some alteration was made. In an action for rent reserved the defendant counter-claimed damages for nuisance.

Held, on the facts there was annoyance for 3 weeks and £21 will be the damages recoverable. But the defendant because of the assignment to S had no legal interest in the land alleged to be affected by the nuisance; he has no cause of action and the counter-claim must fail. **METROPOLITAN PROPERTIES v JONES** (1939) 2 All E.R. 202 (K.B.D.)

OFFICIAL REFERENCE—Reference of question of fraud—Propriety. See **PRACTICE—QUESTION OF FRAUD** (1939) 1 All E.R. 164 (C.A.) = **LR** (1939) 1 K.B. 697

PATENTS AND DESIGNS ACT (1907 1938), S 35—Action for infringement of patents—Striking out defence and counter claim for default in discovery—If certificate of validity of patent under S 35 can be granted—**R. S. C. O 53 A R 20**—Proceeding to trial—Meaning

In an action for infringement of patent the defence and counter claim for revocation of the patent were struck out. The plaintiff delivered of an affidavit of the delivery of an affidavit asked for by the defendant. **Patents and Designs**

There is only a statement of claim containing allegations which are not disputed (because the defence and counter claim were struck out) the certificate under S 35 cannot be given and the case had not proceeded to trial under **R. S. C. O 53 A R 20** and the costs of the issues raised by the particulars of breaches are in the defendant's favour. **v. T. I.**

POWERS—Assignment by son of an expectancy under powers under marriage settlement of patents—Assignment voluntary and not for value—If enforceable in equity

By a voluntary settlement of 8th May, 1929 A. J. T. assigned to the plaintiff bank all his interest to which he may thereafter become entitled under a special power of appointment under the marriage settlement of the

PRACTICE

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See **CON**

(K.B.D.)

PRACTICE—Action against estate of deceased for damages for injuries in motor accident—Grant of letters of administration to Official Solicitor for defending action only

The only estate left by the deceased was a policy of insurance against third party risks. Two persons who were injured in a motor car accident along with the deceased wished to commence an action against the estate of the deceased for damages under the Law Reform (Miscellaneous Provisions) Act, 1934 S. 1(1). There was no body to represent the estate. On an application for grant of administration of the estate to the official Solicitor

Held, a grant limited to the defending of the proposed action against the estate should be granted. *In the goods of KNIGHT* (1939) 3 All E.R. 928 (P.D.A.) = **55 T.L.R.** 992 = 1939 W.N. 307

Action by plaintiff for personal injuries—Defendants each alleging that the injuries were caused by negligence of the other—Order for security for costs against plaintiffs—Propriety

In an action for personal injuries the two defendants each alleged that the injuries were caused by the negligence of the other. The plaintiffs were in all human probability one or more of the defendants. **summons**

Action commenced in the name of a firm—Objection that firm not registered and so not entitled to sue—Application by the person who entered into contract to amend the plaint and to be substituted as the plaintiff—When to be allowed

An action was commenced by L. in the name of a firm of five persons, in the honest belief that he was entitled to sue in the firm name. Defendants in the course of the proceedings discovered that the firm was not registered and not entitled to sue. L. then sought by a summons to be substituted as sole plaintiff and the defendants took out a summons to strike out the statement of claim.

mistake was plaintiffs the costs of the action up to date and of the summons must be paid by him. **NOBLE LOWNDEN AND PARTNERS v. HADFIELD LTD**

161 L.T. 138 = **LR** (1939) 1 Ch. 569 = **108 L.J.** (Ch.) 161

Administration of Justice—Bias of Chairman of the justices—Effect

Every litigant in a British Court of Justice should be satisfied that he is having an impartial and impartial trial and there should be no suspicion of any unfairness. So where on the facts a particular might reasonably have formed the impression that a justice could not give the case an unbiased hearing the case should

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be dealt with by another tribunal of which the particular justice is not a member *COTTE v. COTTE*.

(1939) 2 All E.R. 535 (P.D.A.)=
1939 W.N. 205.

—Allowing newspaper reports of cases to be cited
—Criticism. L.R. (1939) 2 K.B. 53.

—Appeal—Expiry of time for appealing—Principles on which extension granted—R. S.C., O. 59, R. 12 and 16.

Where leave to appeal was sought notwithstanding the lapse of time which put the appellant technically out of Court.

Held, the Court does not grant leave unless there is something which in the opinion of the Court entitled the person who applies for extension of time to be relieved against. Lack of means, ignorance as to a mere technicality or a genuine misunderstanding either of the attitude of the other side or perhaps of some difficult, intricate questions of law on the part of a would-be appellant are some of the reasons where the Court

FINDING v. FINDING

(1939) 2 All E.R. 173 (P.D.A.)

—Appeal not filed in time owing to mistake of legal adviser—Discretion of Court to extend time—R. S.C. O. 58 and 15 and O. 64, R. 7.

The discretion to extend time for filing appeal, is a perfectly free one. The Court is not concerned with the merits of the case or probability of success or otherwise. Where the reason, for the failure to institute his

55 T.L.R. 1023

—Arbitration—Remission by Court for fresh evidence. See ARBITRATION

(1939) 3 All E.R. 168 (K.B.D.)=55 T.L.R.

—Bankruptcy—Petition by creditor—Debtor in Paris—Service of petition in a sealed envelope delivery to his brother—Sufficiency (Bankruptcy 156, 158)—Dismissal of petition for insufficient—If proper

Service of a petition was effected by delivery in a sealed envelope a copy of the petition to the brother of the debtor and the same was returned to the petitioner's

service. On the facts of the case the debtor was fortunate enough to escape on a matter of gr

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—Charging order in favour of judgment creditors—Enforceability if to be by foreclosure or sale

In a summons for an order for foreclosure pursuant to a charging order on certain shares.

Held, following *Attwood v. Gibbons*, (1927) unreported and *D'Auvergne v. Cooper*, (1889) W.N. 256 that the remedy was sale and not foreclosure. *D'APONTE v. SCHUBERT* and ANOTHER

(1939) 3 All E.R. 495 (Ch. D.)=
L.R. (1939) 1 Ch. 958=1939 W.N. 283.

—Costs—Payment of money by defendant into Court—Plaintiff asking for leave to take out money in satisfaction of claim at the time of hearing—Proper order as to costs—Discretion of Court—Appealability—R. S.C., O. 22, R. 3

Plaintiffs claimed damages for injuries sustained by reason of the negligent driving by defendant of a motor car. Defendant paid into Court a certain amount, but denying liability. When the case was taken up for

payment out should not have been made without providing for costs incurred by defendant after the date of payment into Court. *GRIGGS v. PETTS*

(1939) 4 All E.R. 33 (C.A.).

—Discovery—Incriminating Interrogatories—Privilege in answering—Company if entitled to

The plaintiff in a suit for libel and slander against the defendant company and one L. sought to interrogate both defendants in order to obtain admissions (a) that (1) the defendant company (2) that they were acting on his behalf (3) spoke and plaintiff company and subsequently The defendants that the answers

not conclusive and the Court may have a duty, notwithstanding the assertion of a claim of privilege to compel him to answer; (ii) The Court will insist upon an

but extends to any case in which it is not made to appear to the Court that there is reasonable ground to apprehend danger to the witness from his being compelled to answer. On the facts it is impossible to say that L's objection is *malâ fide* and the answer to the

A limited and it could The defen. LASS, A.) = 505 = 211.

—Discovery—Interrogatories—Asking defendant to admit that their lorry driver made certain statements at inquest—If to be allowed.

PRACTICE

In an action for damages for the death of a motor cyclist, the defendant was asked to admit that their lorry driver made certain statements at the inquest.

Held the only result of the answer to the interrogatory would be not an admission by the defendant that on a particular way in which their driver was dismissed by the defendant that on a particular day their servant not being an agent to make an admission, made a particular statement. So the interrogatories should not be allowed. *Sloan v Hanson* (1939) 1 All ER 333 Dist. BURR v WARE RURAL DISTRICT COUNCIL (1939) 2 All ER 688 (CA).

Discovery—Privilege—If widow entitled to claim in respect of communications during marriage by husband.

Plaintiff sought to administer to the defendant certain interrogatories designed to obtain admissions to the

PRACTICE

the defendant the following interrogatory 'Did you at the inquest (in answer to questions or otherwise) make any and if so which, of the statements contained

—Judgment against the two defendants—Entered as each defendant liable for half judgment—If can

—Leave for service of summons on defendants outside jurisdiction—When proper—R.S.C., O 11 R 1 (g)

that contained in S 3 of the Evidence Act of 1853 which in terms relates only to husbands and wives and you cannot add to that to widowers and widows is not

LINGER v GUINNESS MAHON & CO (1939) 4 All ER 16 (CA D)

—Libel action—Misdirection to the jury—No substantial wrong or miscarriage—New trial—Applied by R.S.C. O 39 R 6

—Divorce petition—With particulars as to date defendant can be dismissed O 25, R 4

The

question as to whether

misdirection may be

examination of the summing up on or miscarriage was occasioned

be ordered R.S.C. O 39, R 6

do
str
Ct. L. v. WHEELER CHERRY (1939) 2 All ER 603 (CA)

was applicable LTD POLIAROFF v NEWS CHRONICLE (1939) 1 All ER 390 (CA)

—Sum of money—As against will

A sum of £5000 and costs was paid into Court by an executor in 1891 to provide a fund to indemnify the executor against possible liabilities in respect of two In a petition in persons interest

form an order for particulars must be made in a general form MARKS v WILSON BOYD (1939) 2 All ER 605 (CA)

160 L.T. 520=55 T.L.R. 699=1939 W.N. 182

—Money paid into Court—Acceptance by plainiff—Effect—Subsequent change in law by decision of higher tribunal—Effect—Plainiff wishing to rely from acceptance—Procedure

The plaintiff the father of a little boy aged 19 months who was killed by a motor lorry belonging to the defendant, claimed damages. The defendant paid £50 into

—Sum of money—As against will
A sum of £5000 and costs was paid into Court by an executor in 1891 to provide a fund to indemnify the executor against possible liabilities in respect of two In a petition in persons interest

(1939) 3 All ER 269 (CA D)

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has been substituted a debt payable by instalments of 10/ a month and as the original judgment is gone he cannot recover interest on it. MORSE v. MUIR.

taining records of commissions earned by the Bank on sales of securities. This was resisted by the Bank as to its right as to other customers.

tendered to the plaintiffs for the amount of the costs. On the affidavit the plaintiffs' the summons

—Propriety

The claim was for damages from defendants for fraudulently obtaining a large sum of money in connection with a company to be referred to an Official

139) 1 ALL E.R. 164 (C.A.) =
= L.R. (1939) 1 K.B. 697 =
161 L.T. 105

CO., LIMITED v. HUCKS

(1939) 3 ALL E.R. 257 (C.A.)

—Pleadings—Amendment—Necessity for formulating amendment in precise terms in the application for leave.

In cases where leave to amend is asked for, it is of

—Recourse to shorthand notes in earlier suit not included in formal judgment—Propriety in deciding question of *res judicata*. See RES JUDICATA

—Right of third party to have judgment by default set aside. See INSURANCE—MOTOR INSURANCE.

107 L.J. (K.B.) 609 =
L.R. (1939) 1 K.B. 279 (C.A.) = 159 L.T. 104 =
64 T.L.R. 831 = 1938 W.N. 229.

—Rules of the Supreme Court—O 14 R 1 and O 27, R 15—Order for summary judgment under R.S.C. O 14—Failure of defendants solicitor to file affidavit or to appear at hearing of summons to oppose it—If order, by default which can be set aside under O 21, R 15

DERRICK v. WILLIAMS

it was made under R. 15 by an accident appear at the hearing of the defendants.

interfere.

PRACTICE

tions between parties to settle the matter was not fruitful and finally defendant applied for filing an appeal. The application on it was also dismissed. The original judgment on the grounds signed in default of appearance to the judgment summons.

Held, there was no such default under R. S. C. O. 14 as is contemplated by R. S. C. O. 27, R. 15 and the matter is not one in which the discretion of the Court should be exercised.

The Russian Bank (one of the plaintiffs) brought an action against the defendant on 16th January, 1918, for the balance on London with the

tortionment—Effect—Costs.

In an libel action tried with a jury 1 farthing damages was awarded in respect of each of 2 defamatory matters. The defendants made a payment into Court of £50 generally with a denial of liability.

Held, in view of the express terms of R. S. C. O. 22, the costs should be awarded to the plaintiff.

before the trial, care should be taken that a real point of law is being raised and there should be a clear definition of what the point of law raised is, and it is those circumstances that the Court can properly deal with the matter and that the procedure under R. S. C. O. 22 should be followed.

When an arbitrator states his award in the form of a special case and that case is brought to this Court it is the working out of the same proceeding which was in

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tiated before the arbitrator and the respective costs ties to each other in the proceedings. The solicitor's lien cannot defeat a opposite party is seeking to obtain WELCH v. ROYAL EXCHANGE (1939) 3 All E.R. 305 (K.B.D.).

—Setting aside judgment by default—Inherent jurisdiction of Court—If to be invoked where there is an alternative remedy—Appellate Court—Power to order amendment—Extent.

The plaintiff a director, by the writ claimed remission

the defendants might be at liberty to the decision of Crossman, J.), the to exercise its inherent jurisdiction

had in the first instance been correctly framed. The

claim therein PERRY v. ST. HELENS LAND AND CONSTRUCTION CO. LTD.

(1939) 3 All E.R. 113 (C.A.) = 1939 WN 226.

—Stare decisis—Decision of 1844 that a local custom was unreasonable—If can be overruled.

Where a decision that a custom was unreasonable

jurisdiction the agreement

und on a other option, en- luvage company for a provision for Pursuant to the ted in England and ury through their iced proceedings in ie agreement was

obtained by duress and therefore invalid. They then applied to the Admiralty Court and asked that the arbitration proceedings should be postponed indefinitely pending the decision of the action in Turkey

PRACTICE.

PRINCIPAL AND AGENT.

declaration against the insurance company.

and *E* gave evidence that the car had been sold before the accident to *B* and the insurance company.

be struck out

Per Greer, L.J.—The claim against the insurance company ought not to be entertained as there was not

himself by purporting to is his own the duty such contract and secret profit which transactions between

STUART (1939) 3 ALL E.R. 235 (Ch.D.) = L.R. (1939) 1 Ch 766 = 161 L.T. 30 = 65 T.L.R. 798 = 1938 W.N. 241.

—Agent's right to commission—Qualification for earning

The defendant promised to pay commission if plaintiff found a tenant. Plaintiff telephoned to *A* about the premises and *W* who was in *A*'s room at the time overheard it and ultimately took the premises. *A* deliberately the premises. In a

deal with declarations of liability on questions of law

ENTITLED TO COMMISSION UNDER THE CONTRACT COLES v. ENOCH, (1939) 3 ALL E.R. 327 (C.A.) = 1939 W.N. 252.

PRINCIPAL AND AGENT—Agent concealing true

—Appointment of sole agent—Sale through another agent—Sole agent's right to damages for loss of opportunity of earning his commission

A sole agent for the sale of property who is prevented from earning his commission by reason of the sale through another agent (whose agency had terminated by the appointment of the sole agent) is entitled to damages for the loss of the opportunity of earning the commission. HAMPTON & SONS LTD v. GEORGE, (1939) 3 ALL E.R. 627 (K.B.D.).

—Commission agent—Principal preventing agent not just excuse—Liability to

for the principal breaking off it introduced by the agent and same price was to avoid the the plaintiff in addition the

ed a certain house, a leasehold having some years to

(1939) 3 ALL E.R. 533 (K.B.D.) = 161 L.T. 86 = 1939 W.N. 287.

—Contract to pay commission on completion of sale—Introduction of purchaser—Sale never taking place—Agent prevented from earning commission—If entitled to claim damages.

1938, a contract was entered into between the defendant and his brother in law by which the defendant purported

PRINCIPAL AND AGENT.

It was proved that the directors of the defendant companies authorised their solicitor to negotiate for the sale of the properties. The solicitor contracted to pay on completion of sale a procuration fee of £10000 to plaintiff and E, who were subsequently instrumental in bringing about the introduction of a prospective purchaser. Owing to dissensions the directors preferred to sell their shares along with those of another shareholder having a controlling interest, to another company, and so the sale never took place. The plaintiff claimed damages equivalent to the commission he would have earned on the breach of an alleged implied covenant to do nothing to prevent his earning the commission.

Held So long as there was a just cause or excuse for not going on with the negotiations then the companies were entitled to say "We will not go on, and by so doing would not make themselves liable in damages to the plaintiff or to BORNE, LTD.

—Estate agent—

by—Mortgage on so

agent for negligence—damages—(2 cases)

In a suit by plaintiff against the defendant for dama

duty Where, by reason of the lack of knowledge and experience, he made a over valuation of the property whereby, the plaintiff suffered loss the plaintiff is entitled to recover the loss which he has sustained owing

LE (1933) 2 KB 271 = 160 LT 533—
55 TLR 739 = 1939 WN 201

—Fraud committed within agents ostensible authority—Liability of principal for damages

The defendant was a solicitor practising in London with a branch office at Slough managed by a clerk who with the help of some forged title deeds induced the plaintiff to advance a loan on a fictitious mortgage. In

LE (1933) 2 KB 271—
55 TLR 57

—Value of property intrust

Company—Negligence in making
for damages to Company subsequently formed

R was instructed by H and P purporting to act in advance for a company to be formed and was told that he would be paid by whoever did pay him at less than the scale fee and that they would find him the figures, as to income, etc. R's estimate as to the capital value of the property was about £14 000 higher than that which it would have been if he had the true figures and not the erroneous ones provided by H and P. C the error and defect by the Chairman of the board instituted the present action against negligence and claiming the value of the

Held, in so far as R's duty was the retainer which he had received from H and P, it was a

PUB. AUTHORITY PROTECTION ACT (1933)

retainer for them and any contractual position in which he stood was one which concerned a duty towards his clients H and P. There could be no satisfaction by the Company. The exceptions in *31st Alister or Draghue v Stevenson* [(1932) A.C. 552] to the rule that a man is obliged to be careful only to those to whom he owes a duty by contract are confined to negligence which results in danger to life, limb or health and the plaintiffs have no cause of action against the defendant. **OLD GAZ ESTATES, LTD v TOWLES AND HARDING AND RESELL.** (1939) 3 ALLER 209 (K.B.D.) = 161 LT 227.

PROBATE—List of bequests found in the same cover as the will—If can be incorporated with the will and admitted to probate

A will was signed by the testator and attested by witnesses

excludes the list. It is only by incorporating the list that the will has any dispositive effect.

(1939) 2 ALLER 418 (P.D.A.)

PROMISSORY NOTE—Letter confirming and undertaking to pay a sum of money—If a "promissory note" for purposes of stamping

Letters given by the defendant were in the following form: Reference A/C 3, T.R./W L.I.S. London W.C.; We confirm herewith that we undertake to pay the sum of £... to you or into your banking account on (date) in respect of the above reference.

Held, the letters did not require stamping as promissory notes and required to be stamped as agreement with a 6d stamp. The plaintiff was allowed to pay the appropriate penalty and recover under the agreement. **WIRTH v WEIGAL LEYGOVE AND CO. LTD.**

(1939) 3 ALLER 712 (K.B.D.)

other way in which the work complained of could be done. It is in fact negligence to carry out work which results in damage unless it can be shown that that way and that way only was the way in which it could be performed. **PROVENDER MILLERS LTD. v SOUTHAMPTON COUNTY COUNCIL.**

(1939) 3 ALLER 882 (C.H.D.)

operation on an infant plaintiff against the

PUBLIC HEALTH ACT (1875), S. 26.

medical officers of a County hospital, brought six months after the alleged negligence.

Held, the medical officers were performing a public duty (and not independent contractors) and the protection of the Public Authorities P. and the claim is barred. **NELSON v. COOK**

(1939) 4 All E.R. 2

PUBLIC HEALTH ACT (1875), S. 26—

Sewers laid by corporation—When can be removed under the section—Necessity for judicial exercise of the powers under S. 26—Procedure.

The plaintiffs had constructed a wall across a private street belonging to them and defendants under powers under Public Health Act, 1875. S. 26 demolished the wall's as being injurious to the sewers laid by the defendants under the surface.

Held, the powers under S. 26 should be judicially exercised and the plaintiff ought to have been given an opportunity to show cause why the wall's being in no way injurious to the sewers beneath them could not be removed under that section. **URBAN HOUSING CO., LTD v. THE MAYOR ALDERMAN AND CITIZENS OF THE CITY OF OXFORD**

(1939) 3 All E.R. 839 (Ch D)

affirmed in (1939) 4 All E.R. 211 (C.A.)

—(1936), S. 58—Order to execute works of repair or restoration—Specification of works if essential for validity of order.

Under the Public Health Act 1936, S. 58 of the owner of certain structures was ordered by the justices for the County Borough to execute such works of repair or restoration or if he so elected to demolish the structure and remove the rubbish as may be necessary for remedying the cause of the complaint. The order was confirm-

ES JUDICATA.

not liable to a person injured in respect of nonfeasance has no application to a company carrying on its business for profit and the defendant is liable for nonfeasance.

by a passenger that first defendant alone negligent—Earlier decision in action for damages to the car that second defendant negligent—Claim of first defendant against second in third party proceedings for indemnity—If barred by res judicata.

Plaintiff a passenger in first defendant's car sued both the first defendant and the second defendant whose servant drove the taxi which collided with first defendant's car. There was judgment against first defendant only and second defendant was found not negligent. In third party proceedings by the first against the second defendant for indemnity, it was contended that in a prior action for damages to the car the second defendant was found "negligent" and that decision operated as res judicata.

Held, there was no bar of res judicata as the damages in the two actions were different and the second defendant was not liable to indemnify as the finding in the present action was that he was not negligent. **JOHNSON v. CARLIDGE AND MATHEWS (MATHEWS THIRD PARTY)**. (1939) 3 All E.R. 664 (K.B.D.).

—Plaintiff found guilty of negligence in action by his father—If estopped from attributing the negligence to defendant for the same accident.

There was a collision between a motor car belonging to the plaintiff's father driven by the plaintiff and a motor car belonging to the defendant. An action by

RAILWAY COMPANY—Duty to maintain road on bridge and approach thereto—Liability for accident due to negligence or default—Public Authorities Protection Act (1893) (c. 61), S. 1—If railway company a public authority.

The defendant Railway Company obtained statutory powers to make the line, which they to derive profits for shareholders. As one upon which they obtained their franchise imposed upon them the duty of erecting and maintaining

in issue is not the same and the decision was not between the same parties. **TOWNSEND v. BISHOP**

(1939) 1 All E.R. 805 (K.B.D.) = 160 L.T. 296 = 55 T.L.R. 433

—Third party proceeding by defendant against

Propriety

In an earlier action in the county court by owners of

ROAD TRAFFIC ACT (1930), S 11

SALE OF GOODS.

under the Fatal Accidents Act on behalf of himself and his daughter as partial dependants of the deceased

Held, in deciding a question of *res judicata* the court is entitled to have recourse to information which is

pendent, a mill owner deriving water power from the river. In a claim by the respondent

Held, whether the stream be natural or artificial the appellants are liable. The alteration cannot be described as a discharge of the statutory object of the highway, been achieved by the appellants

(1939) 1 All E R 273 (CA) =
108 L J (KB) 563 = L R (1939) 2 KB 426 =
160 L T 234 = 55 T L R 389 = 1939 WN 55

ROAD TRAFFIC ACT (1930) (C 43), S 11 (1)—
Motor van speed in excess of maximum—If dangerous driving—Actual or potential danger—Test

A 50 cwt motor van carrying 30 cwt of furniture

Decision of *Farwell, J* (1939) 3 All E R 882
Affirm PROVENDER MILLER v SOUTHAMPTON
COUNTY COUNCIL (1939) 4 All E R 157 (CA)

SALE OF GOODS—Appropriation to contract—With
drawal of valid tender—Subsequent invalid tender—
Effect

There was a contract dated 3rd August, 1938, for
cent more or less of
the sellers of shipping
less. It provided for
000 quarters and that
considered a separate
contract. On 21st August 1938 the sellers wrote to
the buyers "About 15 444 quarters corn have been

L R (1939) 2 KB 94 = 160 L T 398 =
55 T L R 598 = 193

—(1934)—Licence for driving car—
competence—Appeal under Road Traffic
Act (1930) S 11 (1)

The jurisdiction of a
Road Traffic Act (1934)
Inquiry as to whether or

(under statutory powers) of a culvert over a river to
provide outlet for flood water—Liability for interfer-
ence with and damage to right of mill owner deriving
water power from river—Quint—Right of riparian
owners to protect them

The appellants, a cc
powers in altering a
size of the alveas of the

as to whether or not they

7th September was invalid as it was not a tender of
the contract quantity as declared by the notice of
appropriation and the provision in the contract that
each 1 000 units were to be considered a separate con

SALE OF GOODS.

were entitled to send the second invoice as buyers were not entitled to reject it. Appeal reversed the decision and restored the appeal committee. *Re. BAILEY, SON SMYTH & CO.* (1939) 3 All E.R.

44 Com. Cas 267=55

—Breach of warranty—Fraudulent misrepresentation—Statutory duty—Food and Drugs (Adulteration) Act, 1928 (c. 31) S. 2—Breach of—Remedy if restricted to the penalty.

Certain milk consumed by the plaintiffs (purchaser

SALE OF GOODS ACT, S. 4.

—Part payment of purchase price and contract to

included.

Where there is a contract for the sale of goods, and a part payment for the goods is made, but no goods are delivered or tendered by reason of the default of the buyer the seller's only remedy is to recover damages for

vendor and purchaser and consumers who are not parties to the contract. Assuming there was an offence under S. 2 of the Act, that has only penal consequences and did not give new rights of action for breach of duty imposed by it

56.

—C. I. F. contract—Bills of lading—Form in accordance with custom of particular trade—Validity of tender.

The characteristics generally required by the common law to exist in a bill of lading, tender, under a C I F contract, is because it is the general custom of a bill of lading shall possess those in any particular trade there is a lading should have or in substitution custom of merchant to be good tender

N. V. ARNOLD OTTO MEYER v. AUNE

(1939) 3 All E.R. 168 (K B D)

55 T.L.R. 876

—Condition "one-third on deck"—More than one

provision
January

and Feb
shipped
Held,
LTD. v

—Vendor's lien—If available in respect of ordinary commercial goods—Equitable lien—Estoppel—Effect—Agreement to finance hire purchase transactions—If "Money-lending" transactions—Companies Act (1929), S. 266—Floating charge—Notes issued within six months under trust deed executed more than six months before winding up—Validity of charge.

A trust deed of 14th July, 1937, by which Rawires, Ltd., was incorporated recited that the whole of the issued share capital of Rawires were owned by or on behalf of Warners, Ltd., and Rawires' sole business consisted of purchase of radio sets, etc., from Warners

hire purchase agreements as they became due, recovered possession of some chattels on default of the terms of the hire purchase agreements and received the proceeds of sale of certain articles. Both Rawires and Warners went into voluntary liquidation by May, 1938. In an action to enforce the security it was contended that the transaction was a money lending transaction and was invalidated by the Money-lenders Acts 1900 to 1927, and

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liquidation were not invalid—Companies Act, 1929. The vendor's lien has never been ale of ordinary commercial ply, it has been waived by being entirely controlled by

SAW MILLS CO

L.R. (1939) 2 K B D

SALE OF GOODS ACT, S. 14

Appellant was a builder and the respondents were manufacturers and suppliers of certain kitchen fittings. On 3-3-38 appellant's brother and authorised agent orally ordered 5 kitchen fittings. Respondent orally accepted the order. The appellant recorded the order and the price of goods in his purchase day book. On 18-3-38 the goods were taken by the respondent to appellant's premises and delivered to an employee of the appellant. The goods remained in appellant's premises till 12-4-38. On 29-3-38 the appellant executed a deed of assignment for the benefit of his creditors. On 12-4-38 respondents presented a petition for a receiving order. The total indebtedness of the appellant to the respondent excluding the value of these 5 kitchen fittings was under £50. The question was whether there was an enforceable contract with regard to the 5 kitchen fittings.

Held, there was an enforceable contract and there can be a valid receiving order on the petition. *Per A DEBATOR* [No 33 of 1938] 108 L.J. (Ch) 188 = L.R. (1939) 1 Ch. 225 = 160 L.T. 266 = 55 T.L.R. 107 = 1939 W.N. 377

—S 14 (1)—*Implicit condition that goods shall be reasonably fit for the particular purpose, expressly or impliedly made known to the seller—Applicability to abnormalities unknown to seller*

Plaintiff bought from defendants a tweed coat specially made for her. Shortly after she began to wear the coat she developed dermatitis and brought the action.

apply *GRIFFITHS v PETER CONWAY LTD* (1939) 1 All E.R. 685 (O.A.)

SALE OF LAND—Covenant in restraint of trade—When enforceable

If a covenant in restraint of trade is not enforceable, it is void.

WESTRIPP v BALDOCK (1939) 1 All E.R. 279 (O.A.)

—Vendor's default—Loss of bargain—Purchaser's right to damages

A purchaser who has been deprived of the vendor's default cannot have both of bargain and his conveyancing costs.

SETTLEMENT

SALES TAX—Separate sales company formed by manufacturing company—Sales company in fact agent for sale for manufacturing company—Liability of manufacturing company for tax on the price received by sales company

The Special War Revenue Act (1915), S. 86 (1) (Canada) provided as follows: (1) There shall be imposed, levied and collected, a consumption or sales tax of six per cent on the sale price of all goods (a) Produced or manufactured in Canada payable by the producer or manufacturer at the time of the delivery of such goods to the purchaser thereof. The appellant company had been formed for the purpose of buying rice in the raw state and manufacturing it into a finished product. The appellant company sold their products to a sales company who in turn sold to consumers or sold it in the market. The appellant company claimed that they were liable for tax for the price received from the sales company.

Held, on the facts, the sales company was formed by all the partners and directors of the appellant company and their interests were in the same proportion in both. As a fact the sales company were merely agents for sale for the appellant company and the appellant company was liable to the tax on the footing that the sales by the sales company were by the appellant company. *CANADA RICE MILLS, LTD v R* (1939) 3 All E.R. 991 (P.C.)

SEA WALL—Repair by statutory authority—Negligence—Damage to plaintiff's land due to inundation

Endants negligence in the exercise of their duty to repair the sea wall caused damage to plaintiff's land due to inundation.

no liability if damages arise to a person by their failure to exercise that power. But where such a body undertook and attempted to do that work under their powers and damage is caused by their incompetent exercise they are liable for damages for misfeasance as the negligence was not intended to their detriment to rely upon 'to do the work and themselves

A catchment board which is a landowner within its area is liable either for a total neglect to act or (if no more is proved) a lack of efficiency or with too much delay. *OLK RIVERS CATCHMENT BOARD v R* (1939) 4 All E.R. 174 (O.A.)

SETTLEMENT—Covenant for settlement of after acquired property—Beneficiaries of volunteers—Trustees can compel specific performance or recover damages

The trustees of a settlement can compel specific performance or recover damages from a volunteer who has failed to settle property.

no right to compel performance through the trustees. *SETTLEMENT*

Ch.D. =

SETTLEMENT.

108 L J Ch 156=L R. (1939) 1 (Ch) 329=
160 L T. 172=55 T L R. 332=1939 W N. 12.

—Power to invest in stocks—If gives power to invest in shares of a limited company.

A power to "invest in stocks" in a settlement includes the power to invest in fully paid shares of a company. **MCEACHARN'S SETTLEMENT TRUST, *In re* HOBSON v. EACHARN.** (1939) 1 Ch. 858

SHIPPING—Action in rem for possession of ship—*Ship put in charge of the marshal of the Admiralty—Refusal of access to ship to master appointed by owner—If interference with custody of ship—Procedure*

appearance and claimed also to have requisitioned the ship. ~~He was not at the time of the seizure of the ship.~~

action
 remove
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ship and defendant withdrew the consent and moved by summons for the reinstatement of the master and the plaintiff asked for removal of arrest on the ground of discontinuance of the action.

Held, in an action for possession, once the ship was put into the charge of the marshal of the Admiralty

release from the Registry after the master was reinstated
THE ABODI MENDI. 108 L J (P) 60 =

LR, 1939 P. 178 (C.A.) = 55 T L R 451 =
1939 W N. 84

- Charter party—Charterer to stow under supervision of the captain—Liability for improper stowage
- Club rule restraining assignment of ship owner's insurer rights—Effect on charterer's right to get trans fer.

Where a charter party provided that 'Charterers are to load stow and trim the cargo under the supervision of the captain' and the charterparty also provided that the charterers were not to interfere with the stowage for protecting the ship from something which would affect the seaworthiness of the ship, the charterparty was held to require the charterers to stowage is thrown on the charterers:

Held, further, Scott and Clauson, L. JJ (Godard, L. J, dissenting).—The charterer cannot claim against the shipowner (who is in a position to obtain indemnity against the liability from his club) to transfer his rights to him as the Club Rules prohibited it. *Re COURTELINEO AND CANADIAN TRANSPORT CO*

(1939) 2 All E.R. 761 (CA) =
44 Com. Cas. 223 = 160 L.T. 621 = 55 T.L.R. 756

—Charter party—Contract for "Full and complete cargo"—Timber stowed in bundles leaving interstices—Custom of port to load in bundles—If shipowner entitled to "dead freight".

The charter stipulated for a "full and complete cargo". Timber was shipped in bundles which left interstices which could have been filled up if shipped loose. In a claim by the shipowners for "dead freight"

Held affirming (1939) 1 All E.R. 322. When one

SHIPPING.

exclude the charterer from using a particular method, he must say so in express language. *ANGFARTICS A/B HAFEDAN v. PRICE & PIERCE, LTD*

(1939) 3 ALLER 672 (C.A.).
 Charter party—Liberty to cancel "if war breaks out involving Japan"—Construction

The fact that diplomatic relations had not been severed did not compel the arbitrator to find that no war had broken out between China and Japan. The word "war" in the charter party must be construed having regard to the general tenor and purpose of the document, in what may be called a common sense way and not by

161 L.T. 25=55 T.L.R. 503

lows—In case Japan, Norway, China, U.S.A., or any of the Great European powers should become engaged in war with any other of these countries owners and/or charterers have the option of cancelling the charterparty. The charter was for 18 months from time of delivery with an option to extend the period. The ship entered

arbitrators found that by the beginning of September, 1937 China and Japan had become engaged in war and remained so engaged throughout the period upto 2nd April, 1938 and that a reasonable time for the exercise of the option to cancel had elapsed before 2nd April, 1938, and therefore the charterers were not entitled to cancel the charter party.

Held, on appeal, what is reasonable time is a question of fact for the jury. Here the arbitrator has decided that a reasonable time had expired by 2nd

AND BELSHIPS CO., LTD.

(1939) 2 All E.R. 108 (K.B.D.)=
160 L.T. 359=55 T.L.R. 520.

—Charter party—Unseaworthy condition of ship
—Loss caused by—Owners if entitled to general
average.

Where the dominant cause of the loss was the unseaworthy condition of the ship and that unseaworthiness was due to a lack of care on the part of the owners and the master, the owners were not entitled to general average. SMITH HOGG & CO. v. BLACK SEA, ETC. CO. (1939) 2 ALL E.R. 855 (CA) =

—Charter party for two consecutive voyages—If two severable or one indivisible—Deviation in the first voyage—Effect on contract.

By a charter party dated December 30, 1937, the "Yolanda" was chartered and was to be in force for the carrying of cargo. It was found that in the first

R. (1939) 2
45 is not

SHIPPING.

analogy of a charter for a single voyage but the analogy of a contract for delivery of goods in instalments. There was nothing to indicate that the contract was to deviate in the second voyage and the court refused to implement the contract with second voyage. The Court of appeal decided.

Held, that the contract was an charter for two voyages and the deviation in the second voyage relieved the charterers from implementing the contract with regard to the second voyage. *Re BETWEEN COMPAGNIE PRIMA DE NAVIGAZIONE DE PANAMA AND COMPANIA ARRENDATARIA DE MONOPOLIO DE PETROLEOS S A THE VOLANDA* (1939) 4 ALL E R 81 (CA)

—Collision—Breach of duty to take effective action earlier when the other ship continued on her wrong course—Liability for contributory negligence

Held by the House of Lords the Diamond on the wrong course had which the Heranger was bound to take and breach of the duty contributed to the collision. The question depends on what a prudent seaman ought to do and cannot be treated as a question of law. *HERANGER v S S DIAMOND* 108 LJ (P) 12=

—Over delivery—Receiver's liability to consignee (1939) ALL E R 70 (CA)= 44 Com Cas 66=LR 1939 P 121= 160 LT 451=55 TLR 252=1939 V.

SOLICITOR AND CLIENT—Solicitor for admitting negligence without authority of client under instructions from his insurer—Duty to consult when in doubt and keep informed—Breach of Liability—Admission of negligence—If a solicitor—Damages—Nature and measure of

The respondent's policy of motor insurance contained a term as follows: "The Society shall if and so long as it so desires have absolute conduct and control of all or any of the vehicles insured." The respondent's brother who was seriously hurt brought an action against the respondent as well as T Brothers. *Held*, that the respondent was liable for the damages to his brother for personal injuries he had to claim against T Brothers.

... subsequently took out. The two in their heads together in a plan ...

... which the respondent's insurers were interested to which they had no defence. In pursuance of the agreement, the appellant on the instructions of the insurers delivered

TORT.

a defence on behalf of the respondent admitting negligence but denying damages. A judgment followed in

... trial and it is an incident of that duty that the solicitor should consult with his client in all questions of doubt which do not fall within the express or implied discretion left to him and should keep the client informed to such an extent as may be reasonably necessary according to the same criterion. There is to-day no common law duty

... subject to certain implied boundaries and limitations. The insurer was bound to exercise a real discretion upon each question after due consideration of the

... are liable for breach of their contractual duty to the respondents. There cannot be any damages for injury to

... L.R. (1939) 1 KB 191 (CA)= 158 LT 477=54 TLR 861

TORT—Bullock escaping and charging on plaintiff—Owner if liable for damages for injury in the absence of animal

... for injuries. *Held*, that on this occasion this particular animal

... In a claim for damages

—Contributory negligence—Effect—Dangerous machinery—Failure to fence—Liability for injury

... defendant to

—Conversion—Plaintiff's bees escaping into defendant's garden—Plaintiff's right to follow—Extent—Bees if chattels—Claim for conversion—Sustainability

TORT.

Plaintiff's bees escaped into defendant's land and defendant refused entry on his land for recovery of the bees. The bees were lost. In a claim for the bees lost,

Held, bees are *ferre naturae*. When hive taken into disposition of the owner and

anybody's chattel. Therefore no action can be maintained for conversion. **KEARRY v. PATINSON.**

(1939) 1 All E.R. 65 (CA) = 108 L.J. (KB) 158 = LR (1939) 1 KB 471 = 160 L.T. 101 = 55 T.L.R. 300 = 1939 W.N. 10.

—Conversion—Shipowner and consignee—Consignee taking delivery of goods in excess of what was covered by bills of lading—If shipowner can claim value of the goods over delivered.

Consignees under 11 bills of lading claimed against shipowners for short delivery of timber under 4 bills of lading. The shipowners counter claimed the value of 362 pieces of timber not covered by the 11 bills of lading delivered to the consignees.

Held, consignees were not liable to shipowners in tort for conversion. As between shipowner and consignee whether by implication of law or by way of inference from facts, the acceptance by the latter of the overplus of itself does not give the ship owner a right to anything more than the payment of additional freight. **THE NORDBERG (OWNERS) v. SHERWOOD & CO.** (1939) 1 All E.R. 70 (C.A.)

44 Com. Cas. 66 = LR 1939 P 160 L.T. 451 = 55 T.L.R. 252 = 1939 W.N.

—Damages for loss of expectation of life

In an action by the father as personal representative for damages for loss of expectation of life of his daughter aged three the jury awarded £1000. On appeal,

Held, the net result of the cases is that it is left to the appreciation of the jury to fix a figure and the amount to be given should be strictly reasonable and if it errs at all it should err on the low side. The coverable by the personal representative by the death of the victim. **BAILEY v. H.**

108 L.J. (KB) 182 = LR (1939) 1 KB 453 = 160 L.T. 87 = 55 T.L.R. 249 = 1939 W.N. 17

—Damages—Death caused by negligence—Claim by widow—Shortened expectation of life—If of being killed in accident or in war to fight or as result of air raid—Eff damages—Possibility of remarriage or

In an action under Fatal Accidents Act for damages caused by defendants' negligence,

Held, on assessing the pecuniary loss which the widow and other members of the family of the deceased have suffered one has to discount the sum by various considerations such as that he might have been killed in an accident or in war as a result of going to fight or as

—Dangerous machinery—Duty to render as safe as if it had been fenced—Failure of owner—Liability—Factory and Workshop Act, 1901, s. 10(1)(c)

The plaintiff who was the servant of a plumber, a sub-contractor of the defendants was injured in the defendants' power house by a crane. The contentions on behalf of the plaintiff were (1) that the defendants had not fulfilled their duty to the plaintiff as an invitee because the sub-contractor appointed by the defendants

TORT.

to warn had not warned the plaintiff of the danger; (2) that the

cannot lawfully be used. The plaintiff is entitled to succeed. The defendants did take reasonable care to prevent damage to the plaintiff by warning his employer the sub-contractor. **FOWLER v. YORKSHIRE ELECTRIC POWER CO. LTD.** (1939) 1 All E.R. 407 (KB) = 160 L.T. 208 = 55 T.L.R. 375 = 1939 W.N. 48.

—Dangerous machinery—Failure to fence—Liability for injury—Contributory negligence—Effect. See TORT—CONTRIBUTORY NEGLIGENCE

(1939) 1 All E.R. 310 = (1939) 1 KB 540 (CA.)

—Dangerous Machinery—Statutory duty to fence—Death of workman due to breach of statutory duty—Liability of employer—Contributory negligence of workman—If defence.

Plaintiff as administratrix of her deceased son's estate sued to recover damages on the ground that his death was caused by a breach of a statutory duty imposed upon the defendants to keep securely fenced dangerous parts of the machinery in the mine. The defendant to escape liability will have to prove (a) that it was reasonably practicable to avoid or prevent the breach or

v. POWELL DUFFRYN ASSOCIATED COLLIFRIES, LTD. LR (1939) 3 All E.R. 722 (HL) = 55 T.L.R. 1004.

—Defamation See LIBEL AND SLANDER

—Gas Company laying mains without taking

for contribution can be made against joint tortfeasor.

A gas company laid their main in a place from which, have known that was as the result of, and as they had it was for them,

and no one else, to take precautions for the safety of the neighbours. The gas company deliberately chose the risk of fracture to their mains and did not take any precautions.

Held, the gas company were liable for the damage due to their negligence. Although the plaintiff was not one defendant, it would Court to give effect to the not the other, if both the be liable. The coal company **ANSON v. WEARMOUTH**

COAL CO. AND SUNDERLAND GAS CO. (1939) 3 All E.R. 47 (CA) = 55 T.L.R. 747.

—Guest—If licensee—Extent and nature of duty and liability of owner of premises.

Plaintiff in pursuance of an invitation from her sister—the defendant's wife, spent a day in defendant's house, as she had previously done during holidays. The linoleum on the flooring was polished and not covered by any rug or carpet. The plaintiff injured

TORT

herself by a fall due to the polished floor. In a claim for damages against the defendant on the ground of negligence,

Held, there was no breach of such duty as there was on the defendant to take care.

ving a pony attached to a carriage unattended and plaintiff was injured by the pony.

Held, the plaintiff cannot have damages awarded by the jury unless she can show that there was in that animal something vicious which was known to the owner or unless she can prove negligence, the reasonable consequence of which was the behaviour of the horse as proved *ALDHAM v UNITED DAIRIES*

(1939) 3 All ER 478 (KBD)

Injury caused by wheel of motor lorry coming off—Entrustment by owner to competent repairer—Negligence of repairer—Liability of owner and repairer respectively

In an action for damages for injury suffered by plaintiff by reason of the wheel of a motor lorry coming off on the highway

Held, if it appears as a matter of fact that the motor lorry did entrust the repair to a competent repairer, he is not liable to a person who suffers injury upon the road by reason of the competent repairer being negligent. There is no extra duty on the owner of him self seeing whether the repairs have been properly carried out. Unless there before the accident, the repairer's negligence in repairing a going to be used upon the road would if so used, be liable to inflict injury upon a passer by *STENNET v HANCOCK*

(1939) 2 All ER 578 (KBD)

Injury to tenant and his family by a brick which fell from defective chimney stack—Liability of landlord

In an action against the landlord in respect of injuries sustained by the tenants daughter by a brick which fell from the chimney stack owing to its bad state of repair damages were claimed in respect of the injuries to the daughter and for loss of services of the daughter

TORT.

based on negligence and by amendment was added alternatively a claim for breach of warranty. The defence was that there was no duty to plaintiff, there was no negligence on defendants part and that the

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ants the on to

succeed upon either on the ground of negligence or on the ground of breach of warranty. *CAMPBELL v MILES*
HOTEL, LTD
108 L J

Lorry with sugar bags—Sugar escaping from a torn bag—Infant plaintiff injured by lorry while trying to secure for himself such sugar—Liability of owners of lorry—If the lorry an 'allurement' and 'concealed danger'

while trying to secure on a bag in defence was injured by the lorry on a road anting

in the care required of every user of the highway to exercise reasonable care for the safety of others. So the defendants were liable for the damages *CULKIN v MCPHIE & SONS LTD*

(1939) 3 All ER 613 (KBD)

—Right to recover to human safety

A hearse carrying a coffin containing a corpse was followed by a carriage in which were the plaintiffs who were the mother of the deceased an uncle a cousin, and the cousin's husband. A tramcar negligently driven by a servant of the defendant collided with the hearse and overturned the coffin. In a claim for damages for negligence against defendants it was found that the plaintiffs did receive injuries in the nature of shock to a varying degree from the actual sight of damage to the hearse containing the body of a near relative but the action was dismissed on the ground that in law there must be apprehension of injury to a human being or

the hotel during the day and returned at 7 PM for dinner and went out again and returned at 11 20 PM

L.R. (1939) 1 K.B. 404 (C.A.) 115 1 L.R. 240 = 1939 WN 6

ment below and was injured and suffered damage for which he sued the defendants. Originally his claim was

sion with one of the defendant corporation's buses, it was found that the driver saw the plaintiff at a time

TORT.

when he could have averted the accident. But for the plaintiff being elderly the accident would have been averted.

Held, A driver of a motor vehicle in an accident which he could have driven more slowly in spite of the fact a public bus which has to keep to a pace and if plaintiff could have averted the accident if she was younger. The sooner it is recognised as being the law that a person who drives a motor vehicle under modern conditions is in precisely the same position as for instance, that of a surgeon or a person who performs an extremely difficult task in dangerous consequences for other persons.

DALY v LIVERPOOL CORPORATION.
(1939) 2 ALL E.R. 142 (K.B.D.).

Negligence—Consent—When and how far a defence.

Plaintiff voluntarily became a non-paying passenger in a car and even after knowledge that the driver was not sober and in spite of opportunities to get down continued to travel in the car. In an accident that followed the driver was killed and the plaintiff injured. In a claim for damages by the plaintiff against the widow of the driver under Law Reform (Miscellaneous Provisions) Act, 1934.

Held, that the plaintiff did not impliedly consent to, or absolve the driver from liability for any subsequent negligence on his part whereby the plaintiff might suffer harm. DANN v HAMILTON.

(1939) 1 ALL E.R. 59 (K.B.) =
108 L.J. (K.B.) 255 = L.R. (1939) 1 K.B. 509 =
160 L.T. 438 = 55 T.L.R. 297.

Negligence—Death of watchman returning to burning premises—Volenti non fit injuria—How far a defence.

A fire in the defendant's factory was found to be due to the existence of a faulty and scandalously negligent system introduced by the defendant in his works. The plaintiff's husband, a watchman, after some attempt to extinguish the fire, and after going out, returned to the premises and died as a result of the fire. On a claim by the wife of the deceased it was contended, that in returning to the premises he was merely a volunteer and so there was no liability.

Held, that a person who is on premises and to guard them from fire if having gone out of those premises in a position of safety he yet which was at all times part of his premises from fire, is not doing something beyond the scope of his duty so as to treat him as a volunteer. On the facts once the negligence of the defendant is found, there is no room, either for the rule of *novus actus interveniens* or for the application of the doctrine of *volenti non fit injuria*. The plaintiff is entitled to recover damages. D'URSO v SANSON.

(1939) 4 ALL E.R. 26 (K.B.D.).

Negligence—Defendant storing metal sheets and sand for road making—Injury to child by colliding with stack of metal on the way to heap of sand for playing—Liability.

The servants of the defendant (a county council) in the course of supplying material for road making piled up a number of expanding metal sheets by the road (which had been closed). The infant plaintiff while proceeding through the road to play in a heap of sand, also stored by defendant injured one of his eyes by contact with some part of one of the sheets. In a claim for damages,

TORT.

Held, even assuming the child to be a licensee there was no allurement in the heap of metal and there is no trap in that. There was an obvious and not a concealed danger and the defendant was not liable.

Negligence—Fatal Accidents Act (1846) and Law Reform Act (1934)—Claim for damages by parents for death of child due to negligence of defendant's driver—

motor accident due to the negligence of the defendant's driver damages only under Fatal Accidents Act, 1846, and nothing for the loss of expectation of life under the Law Reform Act, 1934.

Held, there must be a new trial on the issue of damages. The Fatal Accidents Act deals with pecuniary loss only. If parties who will benefit under the Fatal Accidents Act and Law Reform Act are the same they must not to any extent be allowed to have their damages twice over. ELLIS v. RAINE 108 L.J. (K.B.) 292 = L.R. (1939) 2 K.B. 180 = 161 L.T. 234 = 55 T.L.R. 344.

Negligence—Fire, the result of an act of the occupier of premises—Escaping to adjoining premises—Liability for damages.

In attempting to catch a rat the defendant lit some paper, which ignited combustible material in the premises. Drums of paraffin which were near exploded and one drum was thrown on the stairs of the plaintiff's premises and damage was caused to the plaintiff's stock of shoes, etc., by the heat, smoke and water resulting from the fire and from the efforts made to extinguish it.

Held, if a fire has been lit intentionally, it is not an accidental fire and so not within the protection of Fire Prevention Act, 1774. In this case the fire was due to the defendant's negligence in igniting the papers near paraffin drums. In any event the plaintiffs are entitled to succeed on the principle of *Rylands v Fletcher*, (1868) L.R. 3 H.L. (330) MULHOLLAND and TEND L.T.D. v BAKFR (1939) 3 ALL E.R. 253 (K.B.D.) = 161 L.T. 20.

Negligence—Loss of expectation of life of wife—Action by joint tort.

in a motor collision husband in driving has not got vested in her at the date of her death a cause of action against her husband for damages for the loss of her normal expectancy of life. So a claim for contribution against the husband by a joint tortfeasor whom the husband

Negligence causing death—Loss of expectation of life—Measure of damages. See TORT—DAMAGES—LOSS OF EXPECTATION OF LIFE.

L.R. (1939) 1 K.B. 453
Negligence in not keeping a pavement adjoining the highway safe to users of highway—Liability of owner of pavement for injuries to user.

Where the asphalt pavement belonging to defendant immediately adjoining the highway bore no sort of indication to any one that it did not form part of the highway itself and injury is caused to people who are using the highway by reason of the pavement being rough and broken up, the owner of the pavement is liable.

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damages for the failure of the obligation to keep the property safe. *OWENS v. THOMAS SCOTT & SONS (BAKERS) LTD. AND WASTALL*

(1939) 3 All. E.R. 663 (K.B.D.)

Negligence—Motor cyclists following each other—Sudden braking by the front cyclist—Injury to pillion rider—Liability.

In a claim for damages for personal injuries sustained by the pillion rider due to the sudden applying of the brake by the motor cyclist and the negligence of the following motor cyclist in being too close to the front cycle to avoid the accident.

(1939) 3 All. E.R. 960 (C.A.).

Negligence—Sale of pistol dangerous in itself to boy under 12—Injury to plaintiff, another infant—Liability for damages.

The sale of a pistol and ammunition to a boy under

liable for the damages. *BUFFITT v. A & E. KILLIE*
(1939) 2 All. E.R. 372 (K.B.D.) =
L.R. (1939) 2 K.B. 713 = 180 L.T. 481 =
65 T.L.R. 645.

Negligence—Supply of a reconditioned car with a wheel not properly tightened—No anticipation that there will be any intermediate examination as would be

reveal a defect such as existed in the motor car, and an

Negligence—Surgeon and patient—Swab left in patient—Res ipsa loquitur—If applicable—Degree of care required.

In an action by the mother of a deceased patient against the surgeon and staff for damages for negligence in leaving a swab in the patient which necessitated a second operation which resulted in death, the plaintiff contend

ordinary good
stances and what
such skill and
particular case

Per *Mackinnon*
dissenting) the c

the burden of proof was on the plaintiff.
Per *Scott and Mackinnon L.J.J. (Goddard L.J. dissenting)*. There was no general rule of law requiring a surgeon after an operation to make sure that no swab was left in the patient. *MAHON v. OSBORNE*

(1939) 1 All. E.R. 635 (C.A.) =
L.R. (1939) 2 K.B. 14 = 160 L.T. 329.

TORT.

Nuisance—Collapse of house—Damage to neighbouring premises—Owner or occupier when liable.

If owing to want of repair premises upon a highway become dangerous, and therefore, a nuisance and a passer by or adjoining owner suffers damage by their collapse, the occupier or the owner, if he has undertaken the duty of repair, is answerable, whether or not he knew, or ought to have known of the danger. On the other hand if the nuisance is created not by want of repair, but for example, by the act of a trespasser or by a secret and unobservable operation of nature, such as a subsidence under or near the foundations of the premises, neither the occupier nor the owner is responsible for

Passing off—Damages—Basis of assessment—Injury to goodwill—If to be presumed.

Once one has established passing off, there is injury to good will and the Court or the jury must assess, by the best means they can what is a fair and temperate

The question
damages can be
is left open.

(1939) 1 All. E.R. 513 (C.A.) =
58 R.P.C. 225

Passing off and infringement of copyright—Use of the title of a musical composition as title of a talkie—How far infringement of copyright, and performing right.

There cannot be an infringement of performing right in a musical composition unless there has been a public

so extensive a scale and of so important a character,

(1939) 4 All. E.R. 192 (P.C.).

TRADE NAMES—Passing off—Users of name "Staunton Chessman" is entitled to restrain use of "Genuine Staunton Chessman"—What constitutes passing off.

The plaintiffs claimed that the name "Staunton" or "Genuine Staunton" used upon or in connection with

with sales,
ustomed to
Staunton"

to stop the
"alone in
"genuine"

when attached to the word "Staunton" must be calculated to lead to the belief that the term is used to mean "made by the plaintiffs" and the plaintiffs are entitled to stop the defendants from describing his chessmen as "Genuine Staunton". *JOHN JACOBS & SONS, LTD. v. CHESS*.
(1939) 3 All. E.R. 227 (Ch. D.).

TRUST FUNDS—*Investments specified by the will—Powers of investment conferred by Statute—Whether prohibited.*

The mere provision in a will for investment in a list of specified investments, with no negative provision, did not amount to an express prohibition and the trustee had the powers of investment conferred by statute. *Re WARREN: PUBLIC TRUSTEE v FLETCHER AND OTHERS.* (1939) 2 All E.R. 599 (Ch D) =

L.R. (1939) 1 Ch. 684 = 161 L.T. 32 =

WILL—*Annuity free of all duties and free of income tax at the current rate for the time being—Income-tax recovered by annuitant—Person entitled to.*

An annuity "free of all duties and free of income-tax at the current rate for the time being" does not entitle the annuitant to retain the income-tax recovered on the annuity. *EVES In re MIDLAND BANK v EVES.*

(1939) 1 Ch. 969

Annuity subject to forfeiture on bankruptcy—Bankruptcy of annuitant in lifetime of testator and discharge after death of testator but before instalment of annuity become payable—Effect on testing of annuity.

Testator directed his executor and trustee under the

WILL,

will should be carried out. *Re DEECHASSIRON LLOYDS BANK, LTD. v. SHARPE* (1939) 3 All E.R. 321 (Ch D) = L.R. (1939) 1 Ch. 934 = 161 L.T. 53 = 55 T.L.R. 841 = 1939 W.N. 240

Beneficiaries bringing into hotchpot advances—Interest on advance from testator's death—Liability.

Where an advanced beneficiary has under a clause in the will to bring the advances into hotchpot, the advances are to be treated as advances made by the testator.

enjoy the interest of the sum advanced and be placed in the same position as unadvanced beneficiaries in regard to the income earned by the capital of the estate before distribution. The advanced beneficiaries will be charged with interest at 4 per cent. on their advances from the death of the testator the amount of such advance being determined by the value of the settled securities as at the date of the settlement. *Re WILLS: DULVERTON v MACLEOD.* (1939) 2 All E.R. 775 (Ch. D) = 108 L.J. (Ch.) 286 = L.R. (1939) 1 Ch. 705 = 160 L.T. 635 = 55 T.L.R. 322 = 1939 W.N. 212.

Bequest contingent on legatee attaining age of 25—If a bequest for an interest determinable at her death—Wills Act, 1837, s. 33, if applicable—Death of

(1939) 3 All E.R. 321 (Ch D) = L.R. 923 = 1939 W.N. 282, 161 L.T. 32 = 55 T.L.R. 841 = 1939 W.N. 240

and church wardens for the import and suggestion it is quite impossible to

bring within the purview of the law of trusts. The bequest fails. *FARLEY AND OTHERS v WESTMINSTER BANK LTD. AND OTHERS.*

(1939) 3 All E.R. 491 (H.L.) = L.R. 1939 A.C. 430 = 161 L.T. 103 = 55 T.L.R. 943 = 1939 W.N. 279.

life tenants in re after death of one—Income of

Annuities to be paid out of income of residuary estate—Direction to resort to capital if income insufficient to pay the annuities—Annuities if to abate.

The testatrix after certain dispositions and legacies

per annum.

Held, as in the present case the testator's intention can be carried out exactly and fully there should be no valuation of the annuities and the directions given in the

annuity payable to be free of income tax

A bequest of an annuity to the testator's widow provided that it was to be 'paid free of all deductions soever'.

WILL

Held, the expression "deductions" must include income tax and the annuity is payable to the widow free of income tax. *In re COWLISHAW COWLISHAW v. COWLISHAW* 108 L J (Ch) 198 =

L.R. (1939) 1 Ch 651 = 160 L T 455 = 55 T L R 537 = 1939 WN 74

Request on 'condition' that legatee adopts testator's daughter—If a trust—Inability of legatee to obtain adoption order—If trust to fail.

A testator bequeathed all his money policies "on condition that the legatee the testator's named daughters and gave each to his other 3 daughters and son".

Held, the word "condition" is not used in its strict legal sense. It is a gift on condition, in the sense of, on the terms, or on the trust that the legatee does certain things. It imports a trust and though the devisee or legatee dies before the testator, and the gift does not take effect, yet the payments must be made, for it is a trust and no trust fails for want of trustees. So the inability of the legatee to obtain an adoption order cannot allow the trust to fail. *Ac FRAME, EDWARDS v. TAYLOR* (1939) 2 All E.R. 865 (Ch D) =

108 L J (Ch) 217 = L.R. (1939) 1 Ch 700 = 160 L T 620 = 55 T L R 746

Construction—Absolute gift with trusts engrafted in them for benefit of third parties—Applicability of rule in Lassence v. Tierney.

To treat the destination over beyond the life reversion that occurs in the present case against the view that an initial gift in fee is in effect to ignore the rule in *Lassence* altogether and to apply the principle that in a will the later of two inconsistent provisions is to prevail over the earlier. That is a principle to which the Court never

Construction—Bequest made—Condition subsequent regarding residence of legatee in Canada—Bequest—Whether void for uncertainty.

A testator by his will provided as follows: "I give devise and bequeath all other property real and personal to my executors upon the following trusts, namely, to manage the corpus of the estate in accordance with their best judgment continuing any investments that exist at the time of my death if they see fit and to pay to or for my said daughter a sum sufficient in their judgment to maintain her suitably until she is forty years of age, after which the whole income of the estate shall be paid to her annually. The payments to my said daughter shall be made only so long as she shall continue to reside in Canada".

Held, that the provision that the payments were to be made "only so long as she shall continue to reside in Canada" constituted a condition subsequent and was void for uncertainty. *SIFTON v. SIFTON*

L.R. (1938) A.C. 658

Construction—Bequest providing for alternative events—Further provision as to order of events—Rule against perpetuities—Applicability.

A testator provided by his will as follows: "On the decease of my last surviving child or on the death of

dying before that period".

WILL

Held, that the words "on the decease of my last surviving child or on the death of the surviving widow or widower of my children" adequately expressed alternative events and the fact that the testator went on to add "as the case may be whichever shall last happen" is not sufficient to make the gift infringe the rule against perpetuities. Consequently the ultimate gift of capital will be valid if the death of the testator's last surviving child happens after the testator's last surviving

Construction—Bequest to association—Existence of association not established—Effect on legacy—If to be construed as gift for a purpose—If bad for uncertainty.

The testatrix by her will appointed the plaintiff executor, and she gave some specific and pecuniary legacies including a legacy in these terms: "I give and bequeath £500 free of duty to the Secretary or other proper officer (whose receipt shall be full and sufficient discharge) of the Oxford Group whose officers are at present situated at Brown's Hotel Dover Street in the City of Westminster" and after disposal of the residue in annuities etc. she directs her trustee to pay any amount in excess of £100 of the income of the residue to the secretary or other proper officer of the Oxford Group aforesaid. The evidence failed to establish

and not to an association, would be to misconstrue the plain language which the testatrix has used in the will. Even if the gift is held to be for the purposes of the old for uncertainty. *RAH v. WILSON* = 1939 WN 113 and remainder

of the money

A will contained the bequest "I give and bequeath to my son B when my securities have been converted into cash two-thirds of the proceeds. To my son H £500. To my son B the remainder of the money."

Held the expression "my securities" in the absence of sufficient context cannot have a wider meaning than a debt or claim the payment of which is in some way secured, and does not include shares or stock in a company. The gift of the remainder of the money is a gift of the residuary personal estate. *Re SMITHERS, WATTS v. SMITHERS AND OTHERS*

(1939) 3 All E.R. 689 (Ch D) = L.R. (1939) 3 All E.R. 689 = 161 L T 193

Deed of separation—Covenant not to revoke a will—If extends to revocation of will by virtue of Wills Act, 1837, s. 18.

testator had made a will, whereby certain dispositions in favour of (1) the wife and (2) the children were made. The separation deed contained among others, a covenant "not to revoke or alter the will" so

covenant not to revoke was broken by the second

WILL.

marriage Farwell, J., held that even assuming that the

LAND. (1939) 3 All E.R. 148 (C.A.) =
L.R. (1939) 1 Ch 820 = 161 L.T. 1 =
55 T.L.R. 819 = 1939 W.N. 251.

—Executors—Administration action by creditor—If plaintiff's right to costs can deprive the personal representative of his right to retainer—Discretion of Court as to costs.

Per Green, M. R. and Finlay (dissenting).—Assets in respect entitled to exercise and claims tainer are in effect withdrawn available for the payment of debts of the same or a lower degree. Payment into Court in an administration action is without prejudice to the executor's right and does not affect the substance of the situation, it being mere machinery for preserving the assets pending a decision upon the executor's claim. The inevitable result is to preserve the priority of that claim over the plaintiff's costs of action. The discretionary power of Court as to

WEMYSS (1939) 3 All E.R. 746 (C.A.) =
55 T.L.R. 1029

—Executors—Judgment by default against—Presumption of devastavit—If open to executors to prove there was no devastavit and assets of deceased no longer in their hands

In the King's Bench in an action by the plaintiffs on a mortgage by the deceased a judgment by default was passed against the capacity. The res by not putting in hands assets of t

the estate was appointed and an order for administration was made, on default of appearance by defendants. Some months later, the plaintiff issued a writ *facias* to enforce the judgment and a return of *bona* was made. In the present action plaintiff payment by defendants personally of about under the mortgage.

BACHELAR v. EVANS.
(1939) 3 All E.R. 606 (Ch.D.) =

WILL.

L.R. 1939 Ch 1007 = 161 L.T. 160 =
39 W.N. 295.

ing religious

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Will

Held, the condition framed for the purpose of divesting a vested interest infringes the rule against perpetuities and is void. *Re SPITZEL'S TRUSTS*

(1939) 2 All E.R. 266 (Ch.D.)

—Gift to wife during widowhood—Remarriage of widow decreed a nullity—Effect.

The testator gave his wife a legacy and gave to her certain house and widowhood to be ed in 1919 and his investments were

converted and paid over to the son. A decree *null* of nullity of that marriage was made on 24th May, 1937, and that decree was made absolute on 15th November, 1937, on the ground of incapacity of the husband to consummate the marriage. She then claimed the life interest as widow.

Farwell, J. [in (1939) 1 Ch. 1000 = (1939) 3 All E.R. 500.] *held* As the second marriage was null and widowhood never determined. But she uch long delay claim the benefit of any the trustees who had disbursed them.

Held, affirming the decision the remarriage determined the widowhood. But as the fund had ceased to exist and by her conduct she acquiesced in the transaction the widow could not now question the transaction. *LEAVES In re*

(1939) 4 All E.R. 260.

—Legacies and annuities—Abatement—Rights of annuitant.

Where an estate was insufficient to pay the legacies and the annuity in full, and there had to be an abatement was to having regard to income of which a gift over of the

entitled to have paid over to her annuity, when abated, if ment of the legacies and the

actuarial value of the annuity in full, any surplus remained that surplus was payable to the beneficiaries

—Legacy "free of duty"—Foreign duties—If pay-

108 L.J. (Ch.) 219 = L.R. (1939) 1 Ch 528 =
160 L.T. 672 = 55 T.L.R. 589 = 1939 W.N. 295

WILL.

testator's death to the date of payment) applies only to a liability to pay an annuity in respect of which the testa-

death as the rule has to be applied at the time of the

ment of rights inter se in the final distribution.

Where there is nothing in the will which indicates that the testator contemplated any particular date for the valuation of the estate for adjustment of rights in the final distribution, the date of the death of the testator must be taken as the most convenient date for such valuation. *Re GUNTHER'S WILL TRUSTS; ALEXANDER v. GUNTHER.*

(1939) 3 ALLER 291 (Ch D) =
LR (1939) 1 Ch 985 = 161 LT 156 =
55 TLR 890 = 1939 WN 265.

Secret trust—Revocation of will except regarding bequest to trustees on trust and increasing that bequest—If valid trust consists

amount.
A subsequent will this clause—The trustees in the will now cancelled is to be increased to £10,000 they knowing my wishes regarding this sum

Held, [affirming (1939) 1 Ch. 580 = (1939) 2 All E.R. 192] If a testator is minded to make use of the machinery of a secret trust, there must be communication to the trustees, acceptance of the will or codicil, execution of the will or codicil, and acceptance. As these essentials present case the gift as to the failed. *Re COOPER, LE NEVE FOSTER v. NATIONAL*

Trust or powers under which an interest can be

and trustees gave the widow a life interest to be cut

WORKMEN'S COMPENSATION

Held [reversing (1938) Ch. 581]. (1) The power conferred by cl 12 of the will was valid by reason of the trusts declared in against perpetuities trust can be created after any life in

In the circumstances of the case the settlement of 9th September 1924, was not be-
nefits was rule

against double portions was not applicable. *In re*

VAUX: *NICHOLSON v. VAUX*
108 L.J. (Ch. 60 = LR (1939) 1 Ch 465 =
160 LT 66.

WORDS AND PHRASES—"Forthwith". See
BANKRUPTCY RULES, 1915, RR 132, 385, AND 586.
(1939) 1 All E.R. 135 (CA) =
LR (1939) 1 Ch. 694.

WORKMEN'S COMPENSATION—Accident arising out of employment—What is.

A physiological injury or change occurring in the course of a man's employment by reason of the work in which he is engaged at or about that moment is an

materially contributes to the occurrence *OATES v. EARL FITZWILLIAMS COLLIERIES CO.*

(1939) 2 ALLER. 498 (CA.)

Accident to workman—Option to claim compensation proceedings independently of the wages while in hospital—Known "election" barring claim under

employed as a surface hand by the defendants, for a period of 12 years prior to February, on which date while working at the bottom of a elevator track known as a jummy, he met with accident in the course of and arising out of his employment. He was seriously injured and had to stay for some months in the hospital. Somebody on behalf of week money which he knew that the money

he basis that the injury was caused by the personal negligence or wilful act of

compensation does not bar the workman's claim at common law and the plaintiff was entitled to damages for £3056-5-6 with costs *SELWOOD v. TOWNELEY COAL AND FIRECLAY CO., LTD*
(1939) 2 ALLER. 132 (K.B.)

WORKMEN'S COMPENSATION

—Employee sustaining injury while attending a gymnasium class as required by the conditions of employment—If accident arising out of and in the course of employment—

tion

Held, the accident did not arise out of and in the course of his employment. *LUCAS v POSTMASTER GENERAL* (1939) 3 All E.R. 660 (C.A.) =

L.R. (1939) 2 K.B. 808 = 161 L.T. 213 = 55 T.L.R. 977 = 1939 W.N. 301

—Injury caused by accident in employment—Claim for compensation—Attempt to get employment—What workman must prove—Workmen's Compensation Act (1931) S. 1(1)

Under S. 1(1) of the Workmen's Compensation Act 1931 a workman who is injured by accident arising out of and in the course of his employment will be disentitled to relief if he has not taken all reasonable steps to obtain employment.

Held that in such a case the workman must prove that he has made attempts to obtain employment which have resulted in failure and he must prove reasonable attempts to get employment. An isolated attempt would not satisfy the provision, the attempts must be genuine and reasonable in volume. *MC LAUGHLIN v CALE DONIA STEVEDORING COMPANY, LIMITED*

L.R. (1938) A.C. 642

—Notice of claim for compensation not given in time—Time taken in prosecution of an action for damages which failed through misjoinder of parties—If reasonable cause for failure

The action by the plaintiff, for damages for death of her husband was dismissed owing to non joinder of parties etc. Then she claimed compensation under the Workmen's Compensation Act after 6 months within which it was to be made.

Held
L.J. (under
it was

—Railway employee walking along line which was forbidden—Death due to accident—Liability for com

pensation.

Held following *Clarke v Southern Railway Co* (1927) 96 L.J.K.B. 572, the death of the plaintiff's

—Receipt of compensation by minor plaintiff under the Act—If bar to claim under common law

Where acceptance of compensation under the act by an infant workman is not for the infant's benefit it can not operate as a bar to a claim under the common law

WORKMEN'S COMPENSATION ACT (1925) S. 1.

for damages (1939) 2 All E.R. 441, reversed. *STIMPSON v STANDARD TELEPHONES*

(1939) 4 All E.R. 225 (C.A.)

—Where a workman has received half wages during his period of disablement as compensation under the statute—Effect on right to damages under common law

tion had, to the know for weeks and had been absence of some satis

factory explanation by them their remedy by a suit for damages was barred. *BURKE AND UNSWORTH v ELDER DEMPSTER LINES LTD*

(1939) 3 All E.R. 389 (K.B.)

—Receipt of half wages during disablement under the statute—Effect on right to damages under common law

Where a workman has received half wages during his period of disablement as compensation under the statute,

Held, following (1939) 3 All E.R. 697, a judgment for damages in a common law action in respect of the same accident cannot be passed against an employer who has paid compensation under the statute. The result is the same even where the workman has not received the whole compensation and has received only a small portion. (1939) 2 All E.R. 132, reversed. *SELWOOD v TOWNELLY COAL ETC., CO*

(1939) 4 All E.R. 31 (C.A.)

—Receipt of full compensation for a subsequent accident—Effect on right to receive compensation for partial incapacity due to earlier accident

An award based on partial incapacity could be made in respect of an earlier accident although the workman was totally incapacitated by subsequent accident and in receipt of full compensation in respect thereof. *FVANS v OAKDALE NAVIGATION COLLIERIES LTD*

(1939) 2 All E.R. 358 (C.A.)

WORKMEN'S COMPENSATION ACT (1925) —

S. 1—“Accident arising out of employment”—Extreme negligence or rashness of workman—If removes accident from scope of section

A workman was entitled in the course of his employ

the blades of the fan. The trial Judge found that though in drying the sacking the man was doing some

lower dissenting) the nature of the act is not altered in kind by the degree of negligence with which it was done. One can have found the work which he is seeking

the question of ne

The workman was not while doing what

HARRIS v ASSO MANUFACTURERS,

L.J. (K.B.) 145 =

160 L.T. 187 =

55 T.L.R. 302 = 1939 W.N. 5

—S. 1(1)—Date of disablement in a case where workman dies without obtaining a certificate of disablement—Date of death, if date of accident—Insurer—Liability to indemnify—S. 1(1) of the Act—Effect

WORKMEN'S COMPENSATION ACT (1925)

S. 1

A workman after nearly a year's illness died from lead poisoning only on post mortem examination in the

workman must be deemed to have contracted the disease which caused his death on the day when he died, eight months after the policy had expired and so not liable under the policy. The contention was negatived and the Insurance company was held liable in (1939) 1 K.B. 621 = (1939) 1 All E.R. 76 (K.B.). The Court of Appeal

under the Act in respect of any injury which does not

—S. 1 (1)—*Death of workman caused his cabin—Absence of conclusive evidence Proper decision.*

In a claim by the widow of a workman the watchman's cabin in which he was employed at the employer's works the death being caused by asphyxiation. There was a supply of gas in the cabin the taps of which were found open, the windows closed and the door was locked.

Hell (Mrs. Maughan, J., dissenting) It must be taken that in the course of his employment the workman was properly in a place to which some risk particular thereto—namely asphyxiation by gas at death is capable of explanation solely by that risk and it is therefore legitimate, in the absence of evidence as to the circumstances of the accident, to attribute the risk, but that any inference whatever as to the origin of the accident may be dispelled by showing otherwise.

Mickelthwait J. was of opinion that the evidence of suicide was evenly balanced the for the employers. **ALEXANDER v. DICKINSON AND SONS** (1939) 3 All E.R. 204 (C.A.)

WORKMEN'S COMPENSATION ACT (1925), S. 25.

—S. 11 (3)—*Compensation to disabled workman*

into consideration, the wages earned in those periods being adjusted by substituting for the actual amounts earned sums ascertained on the increased rate. **HILL v.**

12 (3) and 19 (2)—*Workmen's compensation*
12b, R. 57 (2)—*Application for medical reference—If Registrar can give judicial consideration*

of recent and difficult upon medical reports and to the Registrar. natural justice, where functions, that those decision arrived at possession of both that either party could be

—S. 25 (1) and (2)—*Receipt of compensation under act for injuries—Effect on right to claim damages at common law*

Where a workman has received compensation pursuant to a claim made under the Act, (even though with no knowledge of his right of option to claim either

against or otherwise ded to him at common law must be dismissed

(1900) 3 All E.R. 697 (C.A.) = 161 L.T. 149 = 55 T.L.R. 1000 = 1939 W.N. 327.

WORKMEN'S COMPENSATION

—Employee sustaining injury while attending a gymnasium class as required by the conditions of employment—If accident arising out of and in the course of employment

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(1939) 4 All ER 34 (CA)

—Receipt of full compensation for a subsequent accident—Effect on right to receive compensation for partial incapacity due to earlier accident

An award based on partial incapacity could be made in respect of an earlier accident although the workman was totally incapacitated by subsequent accident and in receipt of full compensation in respect thereof. *EVANS v OAKDALE NAVIGATION COLLIERIES LTD*

(1939) 2 All ER R 358 (CA)

WORKMEN'S COMPENSATION ACT (1925) —

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LJ (KB) 145=

160 LT 187=

55 TLR 302=1939 WN 5

—S 1(1)—Date of disablement in a case where workman dies without obtaining a certificate of disablement—Date of death, if date of accident—Insurer—Liability to indemnify—S 1(1) of the Act—Effect

WILL

marriage Farwell, J., held that even assuming that the covenant was broken by the marriage of the testator, the covenant, if it restricted a subsequent marriage was void

such, and do not extend to the case where the testator, in his will, made a revocation follows as a matter of law whether or not the testator wishes it. It cannot be taken as an intention to impose a tacit restriction on remarriage. *Re. MARSLAND, LLOYDS BANK LTD. v. MARSLAND.* (1939) 3 All E.R. 148 (CA) =

L.B. (1939) 1 Ch. 820 = 161 T.L.J. = 55 T.L.R.

—*Executors—Administrators* plaintiff's right to costs can discontinue of his right to retainers to costs.

Pet Green, M. R. and Finley dissenting).—Assets in respect entitled to exercise and claims tainer are in effect withdrawn available for the payment of debt lower degree Payment into Court action is without prejudice to the does not affect the substance of the

—*Executors—Judgment* sumption of devastavit—If there was no devastavit and in their hands

In the King's Bench in an action by the plaintiffs on a mortgage by the deceased a judgment by default was passed against the executors in their representative capacity. The result was that the defendants admitted by not putting in an appearance that they had in their hands assets of the deceased sufficient to satisfy the claim. Shortly after the judgment proceedings in Chancery Division was commenced by two beneficiaries for administration of the estate of the deceased with the executors as defendants and in that action a receiver of the estate was appointed and an order for administration was made, on default of appearance by defendants. Some months later, the plaintiff issued a writ of *facias* to enforce the judgment and a return of *bona* was made. In the present action plaintiff claimed payment by defendants personally of about £ and under the mortgage.

Held, Though there is no doubt that the King's judgment is conclusive against the defendants so far as it goes, as an admission of assets, and the return of *nulla bona* by the sheriff raises a presumption that a

WILL.

L.B. 1939 Ch. 1007 = 161 L.T. 160 = 1939 W.N. 295.

—*Forfeiture of interest on forsaking religious* perpetuities.

that if any son, daughter should forsake the Jewish religion or marry a person not professing the Jewish religion or born a Jew, as from the time when the fact of such event having occurred shall be proved to the satisfaction of the trustee's forfeit the interest under the will.

Held, the condition framed for the purpose of divest-

to the son. A decree was made on 24th May, 1937, absolute on 15th November, incapacity of the husband to live. She then claimed the life

widow.

I. J. [in (1939) 1 Ch. 1000 = (1919) 3 All E.R. 148] As the second marriage was null and void her widowhood never determined. But she after such long delay claim the benefits of any from the trustees who had disbursed them.

firming the decision the remarriage deter-

Where an estate was insufficient to pay the legacies and the annuity in full, and there had to be an abatement the question arose as to how the abatement was to be effected in relation to the annuity having regard to the direction to set aside a sum, the income of which should be sufficient to meet it, with a gift over of the sum so set aside.

Held, the annuitant is entitled to have paid over to her the capital value of her annuity, when abated, if necessary. If after payment of the legacies and the actuarial value of the annuity in full, any surplus remained that surplus was payable to the beneficiaries

—*Legacy* of duty a duty of estate—If payable out of estate.

Where an English testator by an English will give pecuniary legacy "free of duty" the only duties payable out of his estate in respect of the legacy are duties

WILL.

—*Legacies and annuities in the nature of settled legacies—Estate insufficient—Abatement.*

The testatrix, over estimated the value of her estate which was quite inadequate to provide the legacies she had given subject to her sister's life interest and also the capital sums necessary to provide two annuities. On a construction of the will held that the annuities were settled legacies of a capital sum adequate to provide the annuities of which the annuitant was to be regarded as a life tenant, and are subject to abatement in the same way as any other legacy. *Re CAREW CHANNER v FRANKLYN* (1939) 2 All E R 200 (Ch D) =

108 L J (Ch) 291 = L R (1939) 1 Ch 794 = 161 L T 139 = 55 T L R 875 = 1939 W N 254

—*Personal representative—Right of retainer—Costs of administration action by creditor—Priority.* See WILLS—EXECUTORS—ADMINISTRATION ACTION BY CREDITOR (1939) 3 All E R 746 (Ct of Appeal).

—*Probate—Duty of probate Court to construe—Document with no dispositive effect—If should be granted.*

A Court of Probate, has a duty of making such construction of the documents before it as is necessary to determine what documents ought to be admitted to probate and to whom administration should be granted. A document which has no dispositive effect should not be admitted to probate. *In the estate of THOMAS PUBLIC TRUSTEE v DAVIS* (1939) 2 All E R 567 (F D A).

—*Probate—Jurisdiction of Probate Court to delete word—If to be exercised where omission of word will alter the sense of the will.*

By a will of May 14, 1925 the testatrix bequeathed the residue of her real and personal estate to her trustee in trust for such charitable institution or institutions or other charitable or benevolent object or objects. The testatrix died on March 29, 1929 and the will and codicil were proved in common form on May 7, 1929 and the legacies paid. The respondents held the residue as trustees upon trusts declared by the will. In 1937, the solicitor of the testatrix was to have discovered a typist's error in the will instead of 'and' in charitable or benevolent.

grant revoked and probate in solemn form with the omission of the word "or".

Held the Court of probate has no jurisdiction to

to delete word

contrary to public policy

A will contained the following provision—After

husband or married to some one other than her present husband or divorced from but not subsequently remarried to her present husband W G the whole of the income of my estate shall be paid to her" otherwise she was to have only £ 300 per annum

WILL.

Held, the purpose of the provision is mainly to be sure that the income derived from the estate in excess of £ 300 will not go to the hands of or get under the control of a man whom the testator regarded as a spend-thrift. The object was not to induce the wife either to divorce her husband or put herself in a position in which the husband could divorce her. The disposition is not contrary to public policy. *Re THOMPSON, LLOYD BANK, LTD v GEORGE*

(1939) 1 All E R 681 (Ch D)

—*Provision for forfeiture on undertaking public office—If void as contrary to public policy—Commission in Territorial Army—If 'public office'*

There was a provision in the will, with respect to the sons of the testator that they shall forfeit all benefits under the will if they should before 1943 become candidates for or enter parliament or undertake any other

armed forces of the Crown. The condition is void as being contrary to public policy and there are grounds for suggesting it may be void for uncertainty. *Re ETGAR COHEN v EDGAR* (1939) 1 All E R. 635 (Ch D)

—*Request to legates to leave the properties to named persons—If precatory trusts affecting the absolute estate*

A testator bequeathed his estate to M E C and his mother and father provided I request my mother will on her death leave the property or what remains of it to my 4 sisters and I request M E C will on her death leave her property to my 4 sisters. If M E C die before me the whole of my property shall be given to my mother. The mother predeceased the testator. The question was whether one moiety was undisposed or belonged to the 3 surviving sisters of the testator and the other moiety to M E C absolutely.

hole, the testator did obligation on either of the two persons between whom he is dividing his. It is an absolute gift in equal shares and as one of the testator's lifetime there must be an interest to that share. *Re JOHNSON*

(1939) 2 All E R 458 (Ch D)

—*Residuary estate charged with payment of annuity under another will—Applicability of rule in Allhusen and*

residuary estate charged with payment of annuity to wife. She residuary estate which was to come out of the income of her estate. The testatrix settled her residuary estate. The question is between the life tenant and those

into a personal covenant to pay the annuity under her father's will. The rule in *Allhusen v Whittell* L R 4 Eq 295 (that each instalment as it becomes payable is to be paid by means of a piece of capital together with the income on that piece of capital as from the date of

WILL.

testator to the date of payment) applies only to a liability to pay an annuity in respect of which the testa-

payment. *Re JAMES. RUSSELL v. BLACKBURN.*
(1939) 3 ALL E.R. 6 (C.A.) = L.R. (1939) 1 Ch 905 =
160 L.T. 602 = 55 T.L.R. 792 = 1939 W.N. 223

—*Residuary estate—Date for valuation for adjustment of rights inter se in the final distribution.*

Where there is nothing in the will which indicates that the testator contemplated any particular date for the valuation of the estate for adjustment of rights in the final distribution, the date of the death of the testator must be taken as the most convenient date for such valuation. *Re GUNTHER'S WILL TRUSTS; ALEXANDER v. GUNTHER.*

(1939) 3 ALL E.R. 291 (Ch D) =
L.R. (1939) 1 Ch 985 = 161 L.T. 156 =
65 T.L.R. 890 = 1939 W.N. 265

—*Secret trust—Revocation of will except regarding bequest to trustees on revocation and succession that has set in. If valid trust consists amount.*

A subsequent will
this clause—The su

machinery of a secret trust, there must be communication to the trustees, acceptance of the will or codicil acceptance. As these essential present case the gift as to the failed. *Re COOPER, LE NEVE FOSTER v. NATIONAL PROVINCIAL BANK, LTD., AND OTHERS.*

(1939) 3 ALL E.R. =
L.R. (1939) 1 Ch 811 =

—*Trust or powers under which an interest can be created to take effect more than 21 years after a life in being at the death of the testator—If offends rule against*

authorise and empower the trustees to deal with the fund, as I could have done if living save only that all such dealings shall be within the limitations prescribed by law." Subsequently on 9th September, 1924 he settled 2,000 shares in a company on each of his four children.

WORKMEN'S COMPENSATION.

Held [reversing (1938) Ch. 581]: (1) The power conferred by s. 2 of the

in favour of the children has no reference and cannot be treated as having any implied reference to the benefits conferred upon the settled parties by the will and was not an advancement of the gifts by the will. The rule against double portions was not applicable. *In re VAUX; NICHOLSON v. VAUX.*
108 L.J. (Ch. 60 = L.R. (1939) 1 Ch 465 =
160 L.T. 65.

WORDS AND PHRASES—*"Forthwith"*. See BANKRUPTCY RULES, 1915, RR 132, 385, AND 586.
(1939) 1 ALL E.R. 135 (C.A.) =
L.R. (1939) 1 Ch 691.

WORKMEN'S COMPENSATION—*Accident arising out of employment—What is.*

A physiological injury or change occurring in the course of a man's employment by reason of the work in which he is engaged.

materially contributes to the occurrence. *OATES v. EARL FITZWILLIAMS COLLIERIES CO.*
(1939) 2 ALL E.R. 498 (C.A.)

—*Accident to workman—Option to claim compensation proceedings independently of the wages while in hospital—Known "election" barring claim under*

Plaintiff was employed as a surface hand by the defendants, for a period of 12 years prior to February, 1929.

some months in the hospital. Somebody on behalf of the defendants sent to him each week money which he handed over to his wife. He knew that the money

put forward on
is that the injury
or wilful act of

compensation does not bar the workman's claims at common law and the plaintiff was entitled to damages for £3086-5-6 with costs. *SELWOOD v. TOWNLEY COAL AND FIRECLAY CO., LTD.*
(1939) 2 ALL E.R. 132.

WILL.

—*Legacies and annuities in the nature of settled legacies—Estate insufficient—Abatement.*

The testatrix, over-estimated the value of her estate which was quite inadequate to provide the legacies she had given subject to her sister's life interest and also the capital sums necessary to provide two annuities. On a construction of the will held that the annuities were settled legacies of a capital sum adequate to provide the annuities of which the annuitant was to be regarded as a life tenant, and are subject to abatement in the same way as any other legacy. *Re CAREW CHANNER v FRANKLYN* (1939) 2 All E.R. 200 (Ch D) = 108 L.J. (Ch) 291 = L.R. (1939) 1 Ch 794 = 161 L.T. 139 = 65 T.L.R. 875 = 1939 W.N. 254

—*Personal representative—Right of retainer—Costs of administration action by creditor—Priority.* See WILLS — EXECUTORS—ADMINISTRATION ACTION BY CREDITOR (1939) 3 All E.R. 746 (O II).

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A Court of Probate, has a duty of making such limited construction of the documents before it as is necessary to determine what documents ought to be admitted to probate and to whom administration should be granted. A document which has no dispositive effect should not be admitted to probate. *In the estate of THOMAS PUBLIC TRUSTEE v DAVIS* (1939) 2 All E.R. 567 (P.D.A.)

—*Probate—Jurisdiction of Probate Court to delete word—If to be exercised where omission of word will alter the sense of the will.*

By a will of May 14 1925 the testatrix bequeathed the residue of her real and personal estate to her trustee in trust for such charitable institution or institutions or other charitable or benevolent object or objects.

The testatrix died on M. The codicil were proved in and the legacies paid as trustees upon trusts of half of 1937, the solicitor to have discovered a ty, instead of "and" in "charitable or benevolent." The respondents applied to have the probate corrected by the omission of the word "or." As the appellants objected to such important matter being decided on motion, the writ was issued claiming to have the common form grant revoked and probate in solemn form with the omission of the word "or".

Held the Court of probate has no jurisdiction to reject a word the result of which

—*Provision that beneficiary widowed or divorced from present contrary to public policy.*

A will contained the following provision—After

WILL.

Held, the purpose of the provision is mainly to be sure that the income derived from the estate in excess of £ 300 will not go to the hands of or get under the control of a man whom the testator regarded as a spend-thrift. The effect was not to induce the wife either to divorce her husband or put herself in a position in which the husband could divorce her. The disposition is not contrary to public policy. *Re THOMPSON, LLOYD BANK, LTD v GEORGE*

(1939) 1 All E.R. 681 (Ch D)

—*Provision for forfeiture on undertaking public office—If void as contrary to public policy—Commission in Territorial Army—If "public office".*

There was a provision in the will, with respect to the sons of the testator that they shall forfeit all benefits under the will if they should before 1943 become candidates for or enter parliament or undertake any other public office. The sons were desirous of taking commissions in His Majesty's Territorial Forces. The Trustees applied for the determination of the question if the sons will forfeit their interest by taking the commission.

Held a public office includes the holding of a commission in the Territorial Army or in any other of the armed forces of the Crown. The condition is void as being contrary to public policy and there are grounds for suggesting it may be void for uncertainty. *Re EF GAR COHEN & EDGAR* (1939) 1 All E.R. 635 (Ch D)

—*Request to legatees to leave the properties to named persons—If precatory trusts affecting the absolute estate.*

A testator bequeathed his estate to MEC and his mother and further provided "I request my mother will on her death leave the property or what remains of it to my 4 sisters and I request MEC will on her death leave her property to my 4 sisters. If MEC die before me the whole of my property shall be given to my mother." The mother died before the testator. The mother was undisposed of by the testator and to MEC absolutely.

whole, the testator did not mean to impose any imperative obligation on either of the two persons between whom he is dividing his estate. It is an absolute gift in equal shares and as one died in the testator's lifetime there must be an intestacy as to that share. *Re JOHNSON*

(1939) 2 All E.R. 458 (Ch D)

—*Residuary estate charged with payment of annuity under another will—Applicability of rule in Allhusen.*

was to come out of the income of her estate. The testatrix settled her residuary estate. The question is

WILL.

testator's death to the date of payment) applies only to a liability to pay an annuity in respect of which the testator had entered into a personal covenant and not to a mere charge created by the original testator's will. In this case the payment, out of capital and income, cannot be made without the consent of the annuitant herself. The rule cannot be applied even after the annuitant's death as the rule has to be applied at the time of the payment. *Re. DARBY; RUSSEL v. MACI-REGOR.*

(1939) 3 All E.R. 6 (C.A.) = L.R. (1939) 1 Ch 905 = 160 L.T. 602 = 55 T.L.R. 792 = 1939 W.N. 223

—*Residuary estate—Date for valuation for adjustment of rights inter se in the final distribution.*

Where there is nothing in the will which indicates that the testator contemplated any particular date for the valuation of the estate for adjustment of rights in the final distribution, the date of the death of the testator must be taken as the most convenient date for such valuation. *Re. GUNTHER'S WILL TRUSTS; ALEXANDER v. GUNTHER.*

(1939) 3 All E.R. 291 (Ch D.) =
L.R. (1939) 1 Ch 985 = 161 L.T. 156 =
55 T.L.R. 890 = 1939 W.N. 265

—*Secret trust—Revocation of will except regarding bequest to trustees on trust and increasing that bequest—If valid trust constituted in respect of the increased amount.*

A subsequent will this clause.—The trustees in the will no £10,000 they knowing

Held, [affirming (1 E.R. 192)] If a testator is minded to make use of the machinery of a secret trust, there must be communication to the trustees, acceptance of the will or codicil acceptance. As these essential elements are present in the present case the gift as to the

—*Trust or powers under which an interest can be created to take effect more than 21 years after a life in being at the death of the testator—If offends rule against*

WORKMEN'S COMPENSATION.

Held [reversing (1938) Ch. 581] (1) The power conferred by cl. 12 of the will was valid by reason of the saving words at the end though the trusts declared in cl. 11 were void as offending the rule against perpetuities as the trust is one under which an interest can be created at a date more than twenty-one years after any life in being at the death of the testator (2) In the circumstances of the case the settlement of 9th September, 1924, in favour of the children has no reference and cannot be treated as having any implied reference to the benefits conferred upon the settled parties by the will and was not an advancement of the gifts by the will. The rule against double portions was not applicable. *In re VAUX; NICHOLSON v. VAUX*

108 L.J. (Ch. 60 = L.R. (1939) 1 Ch 465 = 160 L.T. 65.

WORDS AND PHRASES — "Forthwith". See BANKRUPTCY RULES, 1915, KR 132, 385, AND 586.

(1939) 1 All E.R. 135 (C.A.) = L.R. (1939) 1 Ch. 694.

WORKMEN'S COMPENSATION—*Accident arising out of employment—What is.*

A physiological injury or change occurring in the course of a man's employment by reason of the work in which he is engaged at or about that moment is an injury by accident arising out of his employment and

—*Accident to workman—Option to claim compensation proceedings independently of the wages while in hospital—Known "election" barring claim under*

workman was employed as a surface hand by the prior to February,

some months in the hospital. Somebody on behalf of the defendants sent to him each week money which he handed over to his wife. He knew that the money

workmen's Compensation Act, 1925, s. 3(1) still incapacitated and sent not want any his solicitor forward on that the injury wilful act of

for whose acts or default The writ was issued on 3 denied negligence and

not bar the workman's claims at the plaintiff was entitled to damages with costs SELWOOD v. TOWNLEY CLAY CO., LTD (1939) 2 All E.R. 132

WORKMEN'S COMPENSATION

—Employee sustaining injury while attending a gymnasium class as required by the conditions of employment—If accident arising out of and in the course of employment

Held, the accident did not arise out of and in the course of his employment *LUCAS v POSTMASTER GENERAL*, (1939) 3 All E.R. 660 (C.A.) =

L.R. (1939) 2 K.B. 808-161 L.T. 213-55 T.L.R. 977=1939 W.N. 301

—Injury caused by accident in employment—Claim for compensation—Attempt to get employment—What workman must prove—Workmen's Compensation Act (1931) S 1(1)

Under S 1(1) of the Workmen's Compensation Act 1931 a workman who is injured by accident arising out of and in the course of his employment will be disentitled to relief if he has not taken all reasonable steps to obtain employment

attempts to get employment. An isolated attempt would not satisfy the provision, the attempts must be genuine and reasonable in volume. *MC LAUGHLIN v CALE DONIA STEVEDORING COMPANY LIMITED*

—Notice of claim time—Time taken in damages which failed If reasonable cause for

The action by the plaintiff, for damages for death of her husband was dismissed owing to non-joinder of parties etc. Then she claimed compensation under the Workmen's Compensation Act after 6 months within which it was to be made

Held, on the facts reversing the order of Goddard, L.J. [(1938) 4 All E.R. 167] there was reasonable cause

compensation, Held following *Clarke v Southern Railway Co* (1927) 96 L.J.K.B. 572, the death of the plaintiff's husband was not caused by accident arising out of and

—Receipt of compensation by minor plaintiff under the Act—If bar to claim under common law

Where acceptance of compensation under the act by an infant workman is not for the infant's benefit it can not operate as a bar to a claim under the common law

WORKMEN'S COMPENSATION ACT (1925) S 1.

for damages (1939) 2 All E.R. 441, reversed *STIMPSON v STANDARD TELEPHONES*

(1939) 4 All E.R. 225 (C.A.)

—Receipt by plaintiff of workmen's compensation—

had, to the knowledge and had been hence of some satisfaction by a suit for damages was barred. *BURKE AND URSWORTH v ELDER DEMPSTER LINES LTD*

(1939) 3 All E.R. 389 (K.B.D.)

—Receipt of half wages during disablement under the statute—Effect on right to damages under common law

Where a workman has received half wages during his period of disablement as compensation under the statute,

Held, following (1939) 3 All E.R. 697, a judgment for damages in a common law action in respect of the same accident cannot be passed against an employer who has paid compensation under the statute. The result is the same even where the workman has not

—Receipt of full compensation for a subsequent accident—Effect on right to receive compensation for partial incapacity due to earlier accident

WORKMEN'S COMPENSATION ACT (1925)—S 1—'Accident arising out of employment—Extreme negligence or rashness of workman—If removes accident from scope of section

A workman was entitled in the course of his employment to dry the sacking used to protect his trousers while at work at the end of the day at a store or at the

by the House of Lords (Lord Russell of Kilowen dissenting) the nature of the act is not altered in kind by the degree of negligence with which it was done. Once you have found the work which he is seeking to do, to be a workman's work

55 T.L.R. 302=1939 W.N. 5

—S 1(1)—Date of disablement in a case where workman dies without obtaining a certificate of disablement—Date of death, if date of accident—Insurer—Liability to indemnify—S 1(2) of the Act—Effect

**WORKMEN'S COMPENSATION ACT (1925)
S 1**

A workman after nearly a year's illness died from lead poisoning (found only on *post mortem* examination) in the course of his employment. Compensation to the defendants was awarded by the arbitrator against the employer who claimed that the defendant Insurance company were bound to indemnify them under a policy of insurance. The Insurance Company contended that the workman must be deemed to have contracted the disease which caused his death on the day when he died, eight months after the policy had expired and so not liable under the policy. The contention was negatived and the Insurance company was held liable in (1939) 1 K.B. 621, (1939) 1 All E.R. 241 (P). The Court of Appeal

under the Act in respect of any injury which does not

—S. 1 (1)—*Death of watchman caused by gas in his cabin—Absence of conclusive evidence of suicide—Proper decision.*

In a claim by the widow of a workman who died in the watchman's cabin in which he was employed as a watchman at the employer's works the death being caused by asphyxiation. There was a supply of gas in the cabin the taps of which were found open, the windows closed and the door was locked.

Hell (Maughan, J., dissenting) It must be taken that in the course of his employment the workman was properly in a place to which some risk particular thereto—namely asphyxiation by gas attached, and the

risk, but that any inference whatever it may be, as to the origin of the accident may be displaced by evidence tending to show otherwise.

Maughan J. was of opinion that if probabilities of suicide were evenly balanced the findings should be for the employers. **ALEXANDER v. DICKINSON AND SONS** (1939) 3 All E.R. 204 (C.A.)

**WORKMEN'S COMPENSATION ACT (1925),
S. 25.**

—S 11 (3)—*Compensation to disabled workman based on agreed pre-accident average weekly earnings—Increase in average rate of wage—Review—Matters for consideration*

For the purposes of review under S. 11(3) of the Act, the actual periods during which the applicant worked in the 12 months preceding his accident should be taken into consideration, the wages earned in those periods being adjusted by substituting for the actual amounts earned sums ascertained on the increased rate. **HILL v. WOLVERHAMPTON IRON CO.**

(1939) 3 All E.R. 72 (C.A.) =
L.J. (K.B.) 536 = L.R. (1939) 2 K.B. 469 =
61 L.T. 6 = 65 T.L.R. 762 = 1939 W.N. 222

• 12 (3) and 19 (2)—*Workmen's compensation*
20, R 57 (2)—*Application for medical reference—If Registrar can give judicial consideration*

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on material which was not in the possession of both parties to the litigation so that either party could be heard to admit, to explain, or to object to any matter which was before the registrar. **LLAYMAIN COLLIERIES v. JONES.**

(1939) 1 All E.R. 8 (C.A.) =
160 L.T. 34 = 55 T.L.R. 257.

—S 25 (1) and (2)—*Receipt of compensation under act for injuries—Effect on right to claim damages at common law*

Where a workman has received compensation pursuant to a claim made under the Act, (even though with no knowledge of his right of option to claim either under the Act or at common law) the effect of the receipt of (1) sub S. (1) of S. 29 is to release the employer from liability to pay compensation Act and outside the Act to the same of the same accident. There is no machinery by which the money a workman has received as compensation can be set off against or deducted from the damages to be awarded to him at common law. The claim under common law must be dismissed. **PERKINS v. STEVENSON.**

(1939) 3 All E.R. 697 (C.A.) =
161 L.T. 149 = 55 T.L.R. 1000 = 1939 W.N. 327.

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